FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
20-CA-196918	4/14/2017

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Sutter Medical Center, Sacramento

b. Tel. No. (916) 887-0000

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
2825 Capitol Ave.
Sacramento, CA 95816

e. Employer Representative
Dave Cheney, CEO

g. e-Mail
cheneydr@sutterhealth.org

h. Number of workers employed
1900

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Acute Care Hospital

j. Identify principal product or service
Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
On about (b) (6), (b) (7)(C) 2017, Sutter Medical Center, Sacramento placed me on unpaid administrative leave pending investigation because I engaged in protected concerted activities with other employees concerning our working conditions.

In addition, Sutter Medical Center, Sacramento, told me and gave me a policy prohibiting me from talking to any of my coworkers, or anyone else except (b) (6), (b) (7)(C) RN or Sutter Human Resources, about my unpaid administrative leave investigation.

3. Full name of party filing charge *(If labor organization, give full name, including local name and number)*
(b) (6), (b) (7)(C)

4a. Address *(Street and number, city, state, and ZIP code)*
(b) (6), (b) (7)(C)

4b. Tel. No. (b) (6), (b) (7)(C)

4c. Cell No.

4d. Fax No.

4e. e-Mail
(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
(b) (6), (b) (7)(C) statements are true to the best of my knowledge and belief.

(b) (6), (b) (7)(C) (b) (6),
(Print/type name and title or office, if any)

Address (b) (6), (b) (7)(C)

04/13/2017
(date)

Tel. No. (b) (6), (b) (7)(C)

Office, if any, Cell No.

Fax No.

e-Mail
(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

CA CHARGE ASSIGNMENT SHEET

Support Staff Susie

Date Filed: April 14, 2017

Assigned to: Vargas (Supervisor) Parnell (Agent) _____ (Agent) _____ (Agent)

Case Name: Sutter Medical Center, Sacramento

Case No. 20-CA- 196918

IA Category III (II) I Target Date 6/30/17

10(j) potential: Yes ☐ No ☐ Unknown ☐

Discharge Organizing Campaign ☐ *(add to Hot Topics)*

Allegations: **8(a)(1)** If this is an 8(a)(3) CA, enter number of Discriminatees

How was charge received? E-filed ☐ IO Visit ☐ Mailed in ☐ Faxed in ☒

I/O Assisted? Yes ☐ No ☒ **Inquiry ID**

Bargaining Status (Check one): Existing Contract ☐ Organizing Campaign ☐ None ☐ Seeking Initial Contract ☐ Seeking Succeeding Contract ☐

Dispute Location: Sacramento **State:** CA 95816 **County** Sacramento

Does this case block any other? Yes ☐ No ☐

Is there a "request to proceed" in the petition(s). ☐ Enter Petition case number(s)

CHECK ALL APPROPRIATE ALLEGATION CODES BELOW

Is the Section 8(a)(1) allegation a derivative and may be deleted? Yes ☐ No ☐

	8(a)(1)		8(a)(3) continued		8(a)(5) continued
	Coercive Actions (Surveillance, etc.)		Lockout		Refusal to Recognize
X	Coercive Rules		Refusal to Consider/Hire Applicant (salting only)		Repudiation/Modification of Contract [Sec. 8(d)/Unilateral Changes]
	Coercive Statements (Threats, Promises of Benefits, etc.		Refusal to Reinstate Employee/Striker (e.g., Laidlaw)		Shutdown or Relocate (e.g., First National Maint.).Subcontract Work
X	Concerted Activities (Retaliation, Discharge, Discipline		Retaliatory lawsuit		**8(e)**
			Shutdown or Relocate/ Subcontract Unit Work		All Allegations against an Employer
	Denial of Access		Union Security Related Actions		
	Discharge of supervisor (Parker-Robb Chevrolet)		**8(a)(4)**		
			Changes in Terms & Conditions of Emplt		
	Interrogation (including Polling)		Discharge (incl Layoff & Refusal to Hire)		
	Lawsuits		Discipline		
	Weingarten		Refusal to Reinstate Employee/Striker		
	8(a)(2)		Shutdown or Relocate/Subcontract Unit Work		
	Assistance		**8(a)(5)**		
	Domination		Alter Ego		
	Unlawful Recognition		Failure to Sign Agreement		
	8(a)(3)		Refusal to Bargain/Bad Faith Bargaining (incl surface bargaining/direct dealing)		
	Changes in Terms & Conditions of Emplt				
	Discharge (including Layoff & Refusal to Hire (not salting))		Refusal to Furnish Information		
	Discipline		Refusal to Hire Majority		

Docket for 4/14

Is this a Related case? Yes ☒ No ☐ Check here if above case is the main number ☐

If yes, what is main case number?

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Download
NLRB
Mobile App

April 17, 2017

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

Re: Sutter Medical Center, Sacramento
Case 20-CA-196918

Dear Mr. CHENEY:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JANAY M. PARNELL whose telephone number is (415)356-5159. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

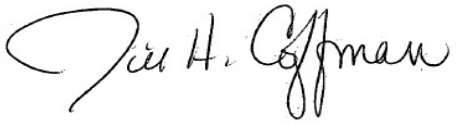
We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JILL H. COFFMAN
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

Revised 3/21/2011 NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	20-CA-196918

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7. A. PRINCIPAL LOCATION:	B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:	B. At the address involved in this matter:

9. DURING THE MOST RECENT *(Check appropriate box):* [ ] **CALENDAR YR** [ ] **12 MONTHS** **or** [ ] **FISCAL YR** *(FY dates)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)*** [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date:		

10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUTTER MEDICAL CENTER, SACRAMENTO Charged Party and (b) (6), (b) (7)(C) Charging Party	**Case 20-CA-196918**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on April 17, 2017**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER,
SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

April 17, 2017
Date

Susie Louie, Designated Agent of NLRB
Name

/s/ Susie Louie
Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Download
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Mobile App

April 17, 2017

(b) (6), (b) (7)(C)

Re: Sutter Medical Center, Sacramento
Case 20-CA-196918

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on April 14, 2017 has been docketed as case number 20-CA-196918. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JANAY M. PARNELL whose telephone number is (415)356-5159. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

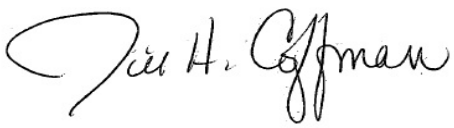
Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JILL H. COFFMAN
Regional Director

From: Parnell, Janay
To: "(b) (6), (b) (7)(C)
Subject: RE: (b) (6), (b) (
Date: Friday, April 28, 2017 5:04:00 PM

Thank you

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

-----Original Message-----
From: (b) (6), (b) (7)(C) [mailto:(b) (6), (b) (7)(C)
Sent: Friday, April 28, 2017 2:04 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Subject: (b) (6), (b) (7)(C

Hi Janay,

Thank you very much for taking all of that time with me. I'm emailing the information you asked for.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

SUTTER VALLEY HOSPITALS dba SUTTER MEDICAL CENTER, SACRAMENTO, Employer, and (b) (6), (b) (7)(C) Charging Party.	CASE 20-CA-196918

☒ REGIONAL DIRECTOR ☐ EXECUTIVE SECRETARY NATIONAL LABOR RELATIONS BOARD Washington, DC 20570 ☐ GENERAL COUNSEL NATIONAL LABOR RELATIONS BOARD Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF Sutter Valley Hospitals dba Sutter Medical Center, Sacramento

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Jatinder K. Sharma, Esq.

MAILING ADDRESS: Sutter Health -- Office of the General Counsel
2200 River Plaza Drive, Sacramento, CA 95833

E-MAIL ADDRESS: SharmaJ1@Sutterhealth.org

OFFICE TELEPHONE NUMBER: (916) 286-6746

CELL PHONE NUMBER: _____ *FAX:* (916) 286-6577

SIGNATURE: _____
(Please sign in ink.)

DATE: 5/1/17

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

June 29, 2017

(b) (6), (b) (7)(C)

Re: Sutter Medical Center, Sacramento
Case 20-CA-196918

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that Sutter Medical Center, Sacramento has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the allegation that the Employer violated Section 8(a)(1) of the Act by placing you on administrative leave in retaliation for your protected concerted activities because there is insufficient evidence to establish a violation of the Act.

The remaining allegation that the Employer violated Section 8(a)(1) of the Act by prohibiting you from discussing workplace investigations with your coworkers remains subject to further processing.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **July 13, 2017**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than July 12, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before July 13, 2017.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after July 13, 2017, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/

DANIEL J. OWENS
Acting Regional Director

Enclosure

cc: DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH - OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

_____

Case Name(s).

_____

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____

(Signature)

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years; that my address is (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

On the date below, I served a true copy of the following document:

APPEAL FORM (20-CA-196918)

Via Electronic Mail addressed as follows:

Jatinder K. Sharma
Sutter Health, Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
E-mail: SharmaJ1@sutterhealth.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 13, 2017

(b) (6), (b) (7)(C)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date: 07/13/17

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Sutter Medical Center, Sacramento
Case Name(s).

20-CA-196918
Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

July 13, 2017

(b) (6), (b) (7)(C)

Re: Sutter Medical Center, Sacramento
Case 20-CA-196918

Dear (b) (6), (b) (7)(C)

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Mark E. Arbesfeld

By: _____
Mark E. Arbesfeld, Acting Director
Office of Appeals

cc: JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
901 MARKET ST STE 400
SAN FRANCISCO, CA 94103-1738

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH
OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

kf

From: (b) (6), (b) (7)(C)
To: Parnell, Janay
Subject: Re: Sutter Medical Center, Sacramento, Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833
Date: Tuesday, July 25, 2017 4:56:29 PM

Dear Ms. Parnell,

I am writing to let you know that I will not be signing the proposed Settlement Agreement regarding the charges to which the Region found merit. I do not wish to enter into any Settlement Agreement while the charges concerning my discipline are on appeal and are being reconsidered by the Region. If this does ultimately go hearing, I would wish for the Judge to have evidence of all of Sutter's misconduct in front of her or him. Thank you for your understanding.

Sincerely,

(b) (6), (b) (7)(C) RN

On Jul 20, 2017, at 3:55 PM, Parnell, Janay <Janay.Parnell@nlrb.gov> wrote:

> (b) (6), (b) (7)(C),
>
> Attached is an informal settlement agreement in this matter that Sutter has agreed to sign. This settlement agreement appears to remedy the violations established by our investigation and to comport with the remedial provisions of Board orders in cases involving such violations. Please let me know immediately if you would like to propose any changes to the settlement agreement.
>
> If you wish to join in the settlement, then please sign and return the settlement agreement to this office by the close of business on Thursday, July 27th. If you decide not to join in this settlement, your objections to the settlement agreement and any supporting arguments should be submitted in writing to me by Thursday, July 27th. Your objections and arguments will be carefully considered before a final determination is made whether to approve the settlement agreement. If you fail to enter the settlement agreement or to submit objections by Thursday, July 27th, then the Region will approve the settlement agreement on Friday, July 28th.
>
> Sincerely,
> Janay
>
> Janay Parnell
> Field Examiner - Sacramento Resident Agent
> National Labor Relations Board

901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

<SET.20-CA-196911.CA case informal settlement agreement. final.pdf>

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Sutter Medical Center, Sacramento

Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Parties **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them at its facilities located at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

INTRANET POSTING - The Charged Party will also post a copy of the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, on its intranet at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will submit a paper copy of the intranet or website posting to the Region's Compliance Officer when it submits the Certification of Posting and provide a password for a password protected intranet site in the event it is necessary to check the electronic posting.

E-MAILING NOTICE - The Charged Party will email a copy of the signed Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, to all employees who work at the facilities located at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Case(s) 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, and 20-CA-197833." The Charged Party will forward a copy of that e-mail, with all of the recipients' e-mail addresses, to the Region's Compliance Officer at karen.thompson@nlrb.gov.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If a Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party, the undersigned Charging Parties, and the undersigned Regional Director. In that case, a Charging Party that fails or refuses to become a party to this Agreement may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes [redacted] No _____
(b) (6), (b) (7)(C)
Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if a Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by that Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If a Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party SUTTER MEDICAL CENTER, SACRAMENTO	Charging Party, Case 20-CA-196911 (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) Date July 21, 17 (b) (6), (b) (7)(C) Print Name and Title below (b) (6), (b) (7)(C)	By: Sign below Date Print Name and Title below
Charging Party, Case 20-CA-196913 (b) (6), (b) (7)(C)	**Charging Party, Case 20-CA-196918** (b) (6), (b) (7)(C)
By: Sign below Date Print Name and Title below	By: Sign below Date Print Name and Title below
Charging Party, Case 20-CA-197780 (b) (6), (b) (7)(C)	**Charging Party, Case 20-CA-197833** **CALIFORNIA NURSES ASSOCIATION**
By: Sign Below Date Print Name and Title below	By: Sign Below Date Print Name and Title below

Recommended By: Date	Approved By: Date
JANAY M. PARNELL Field Examiner	JILL H. COFFMAN Regional Director, Region 20

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain or enforce the overly broad policy in the administrative leave of absence form requesting employees not to discuss ongoing investigations of employee misconduct and **WE WILL** rescind the rule in the administrative leave notice form on that subject.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions, including workplace investigations, with your coworkers and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT ask you about other employees discussing their workplace investigations.

WE WILL NOT threaten you with corrective action because you exercise your right to discuss workplace investigations with your coworkers.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the portions of all administrative leave notices that were issued to employees since October 14, 2016 that prohibit them from discussing workplace investigations with coworkers and **WE WILL** notify them in writing that this has been done.

Sutter Medical Center, Sacramento
(Employer)

Dated: July 21, 17 **By:** (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine

whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400
San Francisco, CA 94103-1738

Telephone: (415)356-5130
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

July 27, 2017

Richard F. Griffin, Jr., General Counsel
Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-196918

Dear Mr. Griffin,

I am writing to join, incorporate by reference, as if fully set forth herein, and adopt as my own, the Position Statement in support of the Appeal and Motion for Reconsideration filed by the California Nurses Association (CNA) on July 18, 2017, in Case 20-CA-197833. CNA's case is closely related to my own and its July 18, 2017 Position Statement supports the basis of my own Appeal and Motion for Reconsideration in Case 20-CA-196918. CNA has informed me that its above-referenced July 18, 2017 Position Statement has already been filed with the NLRB's Office of Appeals, so no duplicate is attached.

Thank you for your consideration,

(b) (6), (b) (7)(C)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

February 7, 2018

(b) (6), (b) (7)(C)

Re: Sutter Medical Center, Sacramento
Case 20-CA-196918

Dear (b) (6), (b) (7)(C)

Your appeal from the Acting Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied.

The Regional Office investigation disclosed insufficient evidence to establish that the Employer violated the National Labor Relations Act (Act) by placing you on administrative leave in retaliation for your protected concerted activities. Rather, the Employer conducted a good-faith investigation into the matter and there was nothing to suggest the investigation was improper or that the Employer relied upon any inappropriate evidence in reaching its decision to place you on administrative leave. Accordingly, your appeal is denied and further proceedings on this portion of the charge are unwarranted.

The remaining allegation that the Employer violated Section 8(a)(1) of the Act by prohibiting you from discussing workplace investigations with your coworkers remains subject to further processing.

Sincerely,

Peter Barr Robb
General Counsel

Mark E. Arbesfeld

By: _____
Mark E. Arbesfeld, Director
Office of Appeals

cc: JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
901 MARKET ST SUTE 400
SAN FRANCISCO, CA 94103-1738

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH - OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

kh

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case: 20-CA-197833	Date Filed: 4/28/2017

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Sutter Medical Center, Sacramento

b. Tel. No. (916) 887-0000

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
2825 Capitol Ave.
Sacramento, CA 95816

e. Employer Representative
Dave Cheney, CEO

g. e-Mail
cheneydr@sutterhealth.org

h. Number of workers employed
1900

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Acute Care Hospital

j. Identify principal product or service
Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3), (4) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
See Attachment A. Section 10(j) injunctive relief requested.

NLRB, RE[illegible]
2017 APR 28 PM 1:08
SAN FRANCISCO, CA

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
California Nurses Association (CNA)

4a. Address *(Street and number, city, state, and ZIP code)*
155 Grand Ave.
Oakland, CA 94612

4b. Tel. No. 510-273-2200

4c. Cell No.

4d. Fax No. 510-663-4822

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
AFL-CIO

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Marie Walcek, Legal Counsel
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 155 Grand Ave., Oakland, CA 94612

4/28/17
(date)

Tel. No. 510-433-2742

Office, if any, Cell No. 510-517-1871

Fax No. 510-663-4822

e-Mail mwalcek@calnurses.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Inquiry ID (b) (6), (b) (7)(C)

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ORIGINAL

Attachment A

Charge Against Employer
Sutter Medical Center, Sacramento

Case 20-CA-197833

by California Nurses Association (CNA)

2. Basis of the Charge:

Within the past six months, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by, inter alia:

- Maintaining and enforcing an unlawful policy prohibiting employees from discussing investigations of alleged employee misconduct and/or discipline of employees;
- Interrogating employees about their protected activities; and/or
- Threatening employees of reprisals for their protected activities.

Within the past six months, the above-named Employer, by its officers, agents, and representatives, placed RN (b) (6), (b) (7)(C) on unpaid administrative leave and subsequently terminated (b) (6), (b) (7)(C) because (b) (6), engaged in concerted activities with other employees of said employer for the purpose of mutual aid and protection, and in order to discourage said concerted activities; because of (b) (6), activities on behalf of CNA, a labor organization, and because (b) (6), engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization; and/or because (b) (6), filed charges under the Act (case number 20-CA-196911).

Within the past six months, the above-named Employer, by its officers, agents, and representatives, placed RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) on unpaid administrative leave and subsequently issued them disciplinary corrective action plans because they engaged in concerted activities with other employees of said employer for the purpose of mutual aid and protection, and in order to discourage said concerted activities; because of their activities on behalf of CNA, a labor organization, and because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization; and/or because they filed charges under the Act (case numbers 20-CA-196913 and 20-CA-196918).

By these and other acts, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Charging Party requests Section 10(j) injunctive relief.

[Inquiry ID (b) (6), (b) (7)(C)

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Sutter Medical Center, Sacramento

b. Tel. No. (916) 887-0000

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
2825 Capitol Ave.
Sacramento, CA 95816

e. Employer Representative
Dave Cheney, CEO

g. e-Mail
cheneydr@sutterhealth.org

h. Number of workers employed
1900

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Acute Care Hospital

j. Identify principal product or service
Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3), (4) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
See Attachment A. Section 10(j) injunctive relief requested.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
California Nurses Association (CNA)

4a. Address *(Street and number, city, state, and ZIP code)*
155 Grand Ave.
Oakland, CA 94612

4b. Tel. No. 510-273-2200

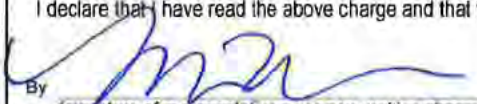
4c. Cell No.

4d Fax No. 510-663-4822

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* AFL-CIO

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Marie Walcek, Legal Counsel
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 155 Grand Ave., Oakland, CA 94612

4/28/17
(date)

Tel. No. 510-433-2742

Office, if any, Cell No. 510-517-1871

Fax No. 510-663-4822

e-Mail
mwalcek@calnurses.org

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PRIVACY ACT STATEMENT

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Attachment A

Charge Against Employer
Sutter Medical Center, Sacramento

Case 20-CA-_____

by California Nurses Association (CNA)

2. Basis of the Charge:

Within the past six months, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by, inter alia:

- Maintaining and enforcing an unlawful policy prohibiting employees from discussing investigations of alleged employee misconduct and/or discipline of employees;
- Interrogating employees about their protected activities; and/or
- Threatening employees of reprisals for their protected activities.

Within the past six months, the above-named Employer, by its officers, agents, and representatives, placed RN (b) (6), (b) (7)(C) on unpaid administrative leave and subsequently terminated (b) (6), (b) (7)(C) because (b) (6), (engaged in concerted activities with other employees of said employer for the purpose of mutual aid and protection, and in order to discourage said concerted activities; because of (b) (6), (activities on behalf of CNA, a labor organization, and because (b) (6), (engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization; and/or because (b) (6), (filed charges under the Act (case number 20-CA-196911).

Within the past six months, the above-named Employer, by its officers, agents, and representatives, placed RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) on unpaid administrative leave and subsequently issued them disciplinary corrective action plans because they engaged in concerted activities with other employees of said employer for the purpose of mutual aid and protection, and in order to discourage said concerted activities; because of their activities on behalf of CNA, a labor organization, and because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization; and/or because they filed charges under the Act (case numbers 20-CA-196913 and 20-CA-196918).

By these and other acts, the above-named Employer, by its officers, agents, and representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Charging Party requests Section 10(j) injunctive relief.

CA CHARGE ASSIGNMENT SHEET

Support Staff Susie

Date Filed: April 28, 2017

Assigned to: Vargas (Supervisor) Pannell (Agent) _____ (Agent) _____ (Agent)

Case Name: Sutter Medical Center, Sacramento

Case No. 20-CA-197833

IA Category III II I | Target Date 6/16

10(j) potential: Yes ☒ No ☐ Unknown ☐

Discharge Organizing Campaign ☐ *(add to Hot Topics)*

Allegations: **8(a)(1)(3)(4)** | If this is an 8(a)(3) CA, enter number of Discriminatees

How was charge received? E-filed ☒ IO Visit ☐ Mailed in ☐ Faxed in ☐

I/O Assisted? Yes ☐ No ☒ | **Inquiry ID** (b) (6), (b) (7)(C)

Bargaining Status (Check one): Existing Contract ☐ | Organizing Campaign ☐ | None ☐ | Seeking Initial Contract ☐ | Seeking Succeeding Contract ☐

Dispute Location: Sacramento | **State:** CA 95816 | **County** Sacramento

Does this case block any other? Yes ☐ No ☒

Is there a "request to proceed" in the petition(s). ☐ | Enter Petition case number(s)

CHECK ALL APPROPRIATE ALLEGATION CODES BELOW

Is the Section 8(a)(1) allegation a derivative and may be deleted? Yes ☐ No ☒

	8(a)(1)		8(a)(3) continued		8(a)(5) continued
✓	Coercive Actions (Surveillance, etc.)		Lockout		Refusal to Recognize
✓	Coercive Rules		Refusal to Consider/Hire Applicant (salting only)		Repudiation/Modification of Contract [Sec. 8(d)/Unilateral Changes]
✓	Coercive Statements (Threats, Promises of Benefits, etc.		Refusal to Reinstate Employee/Striker (e.g., Laidlaw)		Shutdown or Relocate (e.g., First National Maint.).Subcontract Work
	Concerted Activities (Retaliation, Discharge, Discipline		Retaliatory lawsuit		**8(e)**
			Shutdown or Relocate/ Subcontract Unit Work		All Allegations against an Employer
	Denial of Access		Union Security Related Actions		
	Discharge of supervisor (Parker-Robb Chevrolet)		**8(a)(4)**		
			Changes in Terms & Conditions of Emplt		
	Interrogation (including Polling)	✓	Discharge (incl Layoff & Refusal to Hire)		
	Lawsuits	✓	Discipline		
	Weingarten		Refusal to Reinstate Employee/Striker		
	8(a)(2)		Shutdown or Relocate/Subcontract Unit Work		
	Assistance		**8(a)(5)**		
	Domination		Alter Ego		
	Unlawful Recognition		Failure to Sign Agreement		
	8(a)(3)		Refusal to Bargain/Bad Faith Bargaining (incl surface bargaining/direct dealing)		
	Changes in Terms & Conditions of Emplt				
✓	Discharge (including Layoff & Refusal to Hire (not salting))		Refusal to Furnish Information		
✓	Discipline		Refusal to Hire Majority		

Is this a Related case? Yes ☐ No ☒ Check here if above case is the main number ☐

If yes, what is main case number?

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

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May 1, 2017

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVENUE
SACRAMENTO, CA 95816-5680

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Mr. CHENEY:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JANAY M. PARNELL whose telephone number is (415)356-5159. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be**

appropriate. Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

JILL H. COFFMAN
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

Revised 3/21/2011 NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	20-CA-197833

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7. A. PRINCIPAL LOCATION:	B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:	B. At the address involved in this matter:

9. DURING THE MOST RECENT *(Check appropriate box):* [ ] **CALENDAR YR** [ ] **12 MONTHS** or [ ] **FISCAL YR** *(FY dates)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)*** [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date:		

10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUTTER MEDICAL CENTER, SACRAMENTO Charged Party and **CALIFORNIA NURSES ASSOCIATION (CNA)** Charging Party	**Case 20-CA-197833**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 1, 2017**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVENUE
SACRAMENTO, CA 95816-5680

May 1, 2017
Date

Susie Louie, Designated Agent of NLRB
Name

/s/ Susie Louie
Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
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May 1, 2017

CALIFORNIA NURSES ASSOCIATION (CNA)
155 GRAND AVENUE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Sir or Madam:

The charge that you filed in this case on April 28, 2017 has been docketed as case number 20-CA-197833. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JANAY M. PARNELL whose telephone number is (415)356-5159. If this Board agent is not available, you may contact Supervisory Field Examiner OLIVIA VARGAS whose telephone number is (628)221-8876.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance.* This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

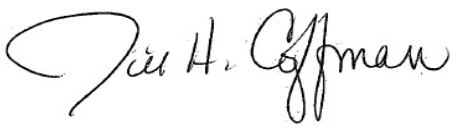
Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlrb.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JILL H. COFFMAN
Regional Director

cc: MARIE K. WALCEK, LEGAL COUNSEL
155 GRAND AVE
OAKLAND, CA 94612

From: Parnell, Janay
To: "mwalcek@calnurses.org"
Subject: Sutter Medical Center, Sacramento, 20-CA-197833
Date: Wednesday, May 3, 2017 6:02:55 PM
Attachments: DCK.20-CA-197833.Letter to Charging Party.pdf

Ms. Walcek,

I received your voicemail earlier today. I have been assigned to investigate all five charges. Regarding the above-captioned charge that CNA filed, the initial docketing letter was mailed to you, and I have attached a copy of it to this e-mail.

Please feel free to give me a call again or to e-mail me if you have any additional questions.

Sincerely,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From:	Coffman, Jill H.
To:	David Willhoite
Cc:	Vargas, Olivia; Parnell, Janay; Marie Walcek; Micah Berul; Roy Hong
Subject:	RE: Sutter Sacramento Nip-in-the-Bud and 10(j) Relief
Date:	Tuesday, June 6, 2017 2:29:15 PM
Attachments:	image001.png

Thank you Mr. Willhoite. It is helpful to have the Union's position on injunctive relief.

From: David Willhoite [mailto:DWillhoite@CalNurses.Org]
Sent: Tuesday, June 06, 2017 10:55 AM
To: Coffman, Jill H. <Jill.Coffman@nlrb.gov>
Cc: Vargas, Olivia <Olivia.Vargas@nlrb.gov>; Parnell, Janay <Janay.Parnell@nlrb.gov>; Marie Walcek <MWalcek@calnurses.org>; Micah Berul <MBerul@CalNurses.Org>; Roy Hong <rhong@nationalnursesunited.org>
Subject: Sutter Sacramento Nip-in-the-Bud and 10(j) Relief
Importance: High

Dear Regional Director Coffman,

Please find attached the California Nurses Association's preliminary position statement regarding Case 20-CA-196911, et al. and requesting 10(j) relief. The Employer's egregious termination of a (b) (6), (b) (7)(C) nurse of the hospital and the targeted discipline of two other long-term nurses, all three of whom were conspicuous leaders in ongoing PCA and union organizing efforts in their unit, has had a dramatic impact on the organizing campaign. Nurses in the unit are terrified, union meeting attendance has dropped and continues to dwindle, and as news about the disciplines and termination spreads without rectification, the organizing campaign is suffering. The chill is significant and without swift 10(j) injunctive relief, the Union fears the organizing campaign could be irreparably harmed. Given the severity and sensitivity of this case, the Union felt it was imperative to bring this matter to the attention of the Regional Director.

Thank you for your attention to this matter.

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822
www.calnurses.org

CALIFORNIA NURSES ASSOCIATION
A Voice for Nurses. A Vision for Healthcare.

Oakland
155 Grand Ave
Oakland, CA 94612
phone: 510-273-2200
fax: 510-663-1625

Via Electronic Filing

June 6, 2017

Jill Coffman, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

RE: *Sutter Medical Center, Sacramento*
Cases 20-CA-196911, et al.

Dear Regional Director Coffman:

The California Nurses Association ("CNA" or "Union") submits this position statement in support of the above-referenced charge against Sutter Medical Center, Sacramento ("Sutter" or "Sutter Sacramento" or "Hospital" or "Employer"). Since (b) (6), (b) (7)(C) 2017, the Employer has engaged in flagrant unlawful conduct for the purpose of chilling, if not outright shattering, the possibility for protected concerted activities, a successful union organizing campaign, and productive collective bargaining. With knowledge of organized concerted activities to advocate collectively for improved working conditions and of a burgeoning union organizing campaign, the Employer carried out the targeted discipline and termination of known union leaders and supporters in an attempt to brazenly quash the organizing efforts of Sutter nurses at the earliest opportunity.

The charges at hand allege that the Employer has violated Section 8(a)(1), (3), and (4) of the Act by (1) interfering with and coercing Registered Nurses ("RNs" or "nurses") in their exercise of protected Section 7 rights by issuing discipline up to and including termination for engaging in protected concerted activity, and by interfering with and coercing nurses in their exercise of protected union activity and protected NLRB activity. Further, the Employer maintained, promulgated, and enforced the facially unlawful policy of preventing nurses from speaking to one another about any discipline issued by the Employer.

These allegations are supported by affidavit testimony from RNs (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C) as well as (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and all of the documentary evidence attached thereto.

The Union urges the Region to swiftly authorize complaint on all the allegations in the charge and additionally seeks Section 10(j) relief. A District Court order requiring the Employer to cease and desist from its unlawful conduct and reinstate terminated employees is necessary to prevent further erosion of the rights guaranteed by the Act. As the substantial chill evidence the Union has already provided to the Region emphatically shows, each day that RN (b) (6), (b) (7)(C) is not returned the work, the terror felt by other Sutter Sacramento nurses about expressing

support for the Union and becoming "the next [redacted]" increases, along with the likelihood of complete remedial failure in this case.

While the Union contemplates that the Region may be of the view that the "likelihood of success" prong of the "just and proper" test may be more readily established after a record is developed before the administrative law judge, in light of the grave threat of remedial failure by waiting likely three more months before such record is developed, the Union urges you to request authorization to seek Section 10(j) relief at this time. The Union believes that you are on very firm ground to seek injunctive relief prior to the ALJ hearing in this case, in light of such chill, and the standard for seeking injunctive relief in the Ninth Circuit.

I. BACKGROUND

With deteriorating working conditions creating unsafe staffing assignments amongst a host of other serious workplace issues, nurses in the [redacted] ("[redacted]") at Sutter Sacramento began engaging in collective efforts to improve working conditions and advocate for better staffing, patient safety, and communication with management. Sutter [redacted] RNs [redacted] and [redacted] quickly rose as known leaders in their unit, gathering grievances from coworkers and bringing collective concerns to management in an attempt to better the working conditions in the unit.

After advocating via meetings and letters to their managers, the [redacted] nurses remained unheard and their concerns were being ignored. The ratio of nurses to patients remained at unsafe levels, and nothing was being done to coordinate the assignments of patients to nurses in a way that made sense given the physical space in which the unit operates. With these serious concerns going unaddressed, [redacted] reached out to CNA to discuss the potential for unionization at the facility. [redacted] discussed these issues and the potential for union representation with [redacted] colleagues, including [redacted] and [redacted] [redacted] and [redacted] quickly became leaders in the effort, meeting with CNA organizers, attending meetings, and talking to coworkers about unionizing. During this process, [redacted] and [redacted] remained leaders in the collective and concerted efforts in their unit to improve immediate working conditions generally, most notably through delivering their concerns to their management during department meetings and by submitting letters and petitions.

With management becoming increasingly aware of the discontent in the [redacted] and of the nurses' discussions of unionization, newly appointed [redacted] announced a town hall event to be held in the unit to discuss concerns and attempt to quell the increasingly organized collective efforts to improve working conditions and patient safety. With several layers of management watching, [redacted] and [redacted] proceeded to share the collective concerns of the nurses in the unit regarding an array of unsatisfactory working conditions. [redacted] also voiced specific concerns about staffing ratios on the unit, the predominant ongoing and shared concern for nearly all the nurses on the unit. They sincerely hoped that in bringing these concerns forward, [redacted] and others would honor their proclamations of wanting to do better for the Unit and the hospital. [redacted] insisted that the nurses work with their immediate supervisors to

communicate concerns and develop solutions. Following (b) (6), (b) (7)(C) direct instruction, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) met with (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) immediately following the meeting to further discuss their concerns and ideas about improving working conditions at the hospital.

Far from taking these concerns seriously, Sutter used the opportunity to positively identify the leaders of the organizing campaign in order to immediately target them and to "nip in the bud" all of the (b) (6), (b) (7)(C) nurses' efforts to exercise their core Section 7 rights. The day following the town hall, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) were each called in to speak with management separately, were questioned, and handed paperwork informing them that they were being placed on unpaid leave pending an investigation into a fabricated and spurious alleged workplace violence incident. In added insult, the nurses were prohibited from speaking with any of their colleagues about their unprecedented disciplinary investigation. Stunned at the egregious accusations, each of the nurses filed an unfair labor practice charge with this Region. Days later, (b) (6), (b) (7)(C) was terminated and (b) (6), (b) (7)(C) and (b) (6), (b) (7) were placed on a corrective action plan equivalent to a last chance agreement.

The targeted discipline of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) was clearly retaliatory and a shameless, blatant affront on core Section 7 rights in an attempt to ruthlessly suppress self-organization. These nurses, with a combined 60 years at Sutter, all with spotless records and stellar evaluations, have had their reputations sullied and their very livelihoods threatened. The Region must take immediate action to restore the promises of the Act and hold this Employer accountable for its unfair labor practices. That is, the Union urges the Region to authorize complaint on all the allegations in the charge and additionally seeks Section 10(j) relief, which is absolutely appropriate and necessary in light of the egregious acts of the Employer calculated to chill employee engagement in collective concerted activities and stamp out key union support in the fledgling stages of an organizing campaign.

II. 8(a)(3) and (4) FACTS AND ANALYSIS

A. (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) and (b) (6), (b) (7) Engaged in Known Protected, Concerted Activities Dating Back to September 2015

On numerous occasions since the move to the new facility, (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), and (b) (6), (b) (7) have engaged in visible, collective action designed to address terms and conditions of employment. As documented extensively in their affidavits, these nurses routinely received both solicited and unsolicited grievances from other (b) (6), (b) (7)(C) nurses regarding issues affecting patient safety and working conditions. The dominating concern on the unit has been nurse-to-patient ratios ("ratios"). (b) (6), (b) (7)(C) patients, (b) (6), (b) (7)(C) require constant and intensive care. The nurses in the (b) (6), (b) (7)(C) feel that the 3:1 or 4:1 ratio that have been routinely assigned are overwhelming, stressful, and put the nurses in a position where they cannot provide the care that they feel each patient demands. This was complicated by the fact that the new floor plan of the unit divides the patients into different pods such that a nurse may have two patients in one pod on one in another, outside of the direct line of sight of the assigned nurse. In meeting after meeting with (b) (6), (b) (7)(C) management, and finally in the town hall meeting with Hospital (b) (6), (b) (7) (b) (6), (b) (7)

[redacted], [redacted] and [redacted] spoke out about the effects these unmanageable ratios were having on nurses job performance in the unit. This problem even led [redacted] to contact the Department of Public Health ("DPH"), which performed an unannounced inspection of the department, and concluded that the [redacted] was in fact out of ratio required by California state law. Initially, [redacted] filed the DPH complaint without consulting with other nurses in the unit, but after filing discussed it with [redacted] colleagues. In fact, after the DPH allowed the [redacted] to return to "flexing" its ratios, nurses came to [redacted] asking that [redacted] go back to the DPH because conditions had deteriorated to previous levels—by that time it had become common knowledge that [redacted] had filed the original complaint.

[redacted] along with others, also stressed the need for ergonomic adjustments on the unit, including new desks that could accommodate nurses of different heights (several nurses had gone out on disability as a result of not being able to sit while charting). According to RN [redacted] an ergonomic evaluation was performed in November 2015. As a result, the Employer was instructed that it needed to provide adjustable height desks with movable computer arms in order to accommodate nurses of varying heights. [redacted] managers have continued to promise replacement desks, but nothing ever materialized.

Furthermore, throughout the event leading up to the encounter with [redacted] namely the town hall with [redacted], RNs [redacted] and [redacted] were engaged in concerted activities by voicing the concerns of the nurses in their department. [redacted] specifically read from a list of grievances that [redacted] had collected from the nurses beforehand.

The final encounter which led to a fabricated report resulting in [redacted] termination and [redacted] and [redacted] discipline was one of protected concerted activity ("PCA"). After expressing their collective concerns about working conditions with [redacted] at the [redacted] town hall on [redacted], [redacted] instructed nurses to work with their immediate supervisors to communicate concerns and develop potential solutions. Accordingly, [redacted] and [redacted] along with colleague [redacted] gathered in the hallway to speak to [redacted] about how to implement the suggestion board advocated by [redacted]. During that conversation, [redacted] and [redacted] expressed several concerns with management communication and the conversation returned to ratios. In the midst of this conversation focused on improving the RNs conditions of employment, [redacted] became irate, raised [redacted] voice, and ultimately stormed away from the conversation.

B. [redacted] and [redacted] Engaged in Known Union Organizing Efforts

[redacted] and [redacted] have all regularly attended union meetings with organizers from CNA dating back to last year. They have spoken regularly with their colleagues in the [redacted], as well as with nurses from other departments, about the benefits of unionization. ([redacted] is already a member of CNA through [redacted] at [redacted].) In the case of [redacted] and [redacted] they informed other nurses of the union effort and encouraged them to attend meetings. [redacted] estimates that [redacted] has spoken to 70 to 80 other nurses. According to an email sent by [redacted] to a CNA representative and attached to [redacted] affidavit, [redacted] learned through a

co-worker that Department managers had identified [redacted] and [redacted] as the union leaders as early as September 2016. [redacted] learned from [redacted] that the Employer was aware of their union activity. [redacted] has no direct evidence that the Employer knows of [redacted] organizing activites, but [redacted] presumes that because the Union activities of [redacted] and [redacted] are widely known, [redacted] is guilty by association due to [redacted] close relationship with them.

C. [redacted] and [redacted] Filed Charges with the Board and Participated in an NLRB Investigation

On the evening of [redacted], 2016, the day after [redacted] and [redacted] were placed on unpaid leave pending investigation into the trumped up workplace violence incident, each nurse filed individual charges with Region 20 of the NLRB related to the discipline and the unlawful gag order imposed by the Employer that prohibited them from discussing their disciplines with their coworkers. Only after the charges were filed did ultimate discipline result. [redacted] was terminated and [redacted] and [redacted] were placed on the equivalent of last chance agreements.

D. [redacted] Termination and [redacted] and [redacted] Disciplines were Because of their Protected, Concerted Activities and Union Organizing Activities

The discipline and terminations of key nurse leaders was a calculated attempt by the Employer to interfere with, coerce, and restrain employees in the exercise of rights guaranteed by the Act. Absent legitimate rationale from the Employer rebutting these allegation, the Region must find merit and issue a complaint. Whether analyzed under *Atlantic Steel* or *Wright Line*, the Employer's motivating factor in disciplining these nurses with prior-to-unblemished records was their protected union or concerted activity.

It cannot be denied that [redacted] and [redacted] were engaged in PCA in their discussion with [redacted] that led to their discipline. That communication was wholly about improving communication with management and addressing nurse-to-patient ratios that have been a key underpinning of the [redacted] nurses' concerns with working conditions. The Employer may argue that, although engaged in obvious PCA, [redacted] and [redacted] lost protection under the Act by their allegedly pejorative conduct, as set forth in *Atlantic Steel Co.* In *Atlantic Steel*, the Board established a four factor test to determine whether employee misconduct that occurs during the course of otherwise protected activity is so opprobrious as to lose protection under the Act. 245 NLRB 814, 816 (1979). The four factors are: 1) the place of the discussion; 2) the subject matter of the discussion; 3) the nature of the employees' outburst; and 4) whether the outburst was provoked by the employer's unfair labor practice. *Ibid.*

In the instant case, the conduct of [redacted] and [redacted] cannot be construed, even under the most negative interpretation of their actions, as so opprobrious as to lose protection under the Act. To the first factor, the nurses were in a hospital hallway during the conversation in question. However, the conversation took place directly following the Employer-called town hall meeting and [redacted] and [redacted] were following express direction from the hospital [redacted]

to discuss working conditions with [redacted] following the town hall. Therefore, the first factor of the *Atlantic Steel* test weighs heavily in favor of protection. To the second factor, the subject matter of the discussion was entirely related to concerted attempts to improve working conditions, namely communication with management and nurse-to-patient ratios. To the third and fourth factor, here, there was no outburst from [redacted] or [redacted] The only outburst, in fact, came directly from [redacted] who ultimately yelled at the nurses and stormed away. The Employer's termination and discipline notices assert that [redacted] and [redacted] were acting aggressively and that [redacted] body. However, every witness beside [redacted] has stated that there was no aggressive behavior or statements from [redacted] or [redacted] and the Employer has to date refused to release any surveillance footage from the date and place in question, which would tell a wholly different story than the one fabricated by the Employer. Assuming that, at worst, [redacted] and/or [redacted] made some intimidating or aggressive statements, which they did not, such statements, in light of the surrounding circumstances, would still not cause [redacted] or [redacted] to lose protection under the Act. *See, i.e., In Re Kiewit Power Constructors Co.*, 355 NLRB 708 (2010) (finding that employees angry statements, "it was going to get ugly" and that their manager "better bring [his] boxing gloves," were not cause for the employees to lose the Act's protection). It is clear that under the *Atlantic Steel* test, [redacted] and [redacted] retain their protection under the Act.

Accordingly, under the *Atlantic Steel* doctrine, the Employer violated the Act for the very protected concerted activity in which [redacted] and [redacted] were immediately engaged. Further, when viewed through the prism of *Wright Line*, the Employer's flagrant discipline of these [redacted] nurses remains unjustifiable.

The Board, in *Wright Line*, established a burden shifting test in 8(a)(3) cases which allege that an employer's adverse employment action against an employee was motivated by improper animus against the employee's protected Union activity. See 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel must make an initial showing that the employee's union support or activity was a "motivating factor" in the employer's decision to take adverse action against the employee. *Id.* at 1084. In other words, to establish a presumption that the employer's conduct was unlawfully motivated, the General Counsel first must prove that the employee engaged in union activities, that the employer had knowledge of these activities, and that the employee was terminated because of union animus. *United Parcel Service*, 325 NLRB 1, 6 (1997).

Here it is clear that [redacted] and [redacted] were engaged in union activities. These nurses were leaders in the union organizing efforts in their unit. Each nurse got involved early and have been key union organizing leaders, attending union meetings, speaking at union meetings, soliciting coworkers to get involved in the organizing campaign, and working closely with union staff to progress the union organizing efforts. Their key involvement in the union organizing efforts did not go unnoticed by the Employer. Hospital management by [redacted] sent an email to [redacted] stating that [redacted] knew these nurses were trying to organize the Union. Several managers also made comments in meetings with other nurses stating their

knowledge of [redacted] involvement, and by association, [redacted] and [redacted] Further, nurses even outside of [redacted] commented to [redacted] that they were aware of [redacted] and [redacted] union organizing efforts, as their activities on behalf of the Union were so regular as to be common knowledge throughout the facility. As such, a presumption under *Wright Line* is easily established in this case.

An employer has the opportunity to rebut the *Wright Line* presumption by proving that it would have taken the same action if the employee had not engaged in protected activity. *United Parcel Service*, 325 NLRB 1, 6 (1997). To establish this affirmative defense, "[a] Respondent cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993). In determining the reason for questioned discipline, motive may be demonstrated by circumstantial evidence. "To support an inference of unlawful motivation, the Board looks to such factors as inconsistencies between the proffered reasons for the discipline and other actions of the employer, disparate treatment of certain employees compared to other employees with similar work records or offenses, deviations from past practice, and proximity in time of the discipline to the union activity." *Embassy Vacation Resorts,* 340 NLRB 846, 848 (2003).

Here, it is clear that the Employer would not have taken the same action absent the nurses' engagement in PCA and union organizing activities. Nurses in the Unit do not ever remember a nurse having been placed on administrative leave pending an investigation in the manner [redacted] and [redacted] were. Further, the examples of other [redacted] RN terminations or levels of discipline similar to [redacted] and [redacted] are sparce and only for far more substantial and ongoing misconduct with multiple infractions. In the case of [redacted] and [redacted] neither had, in their combined over 60 years of experience at Sutter Sacramento, any infractions or misconduct on their records. All had pristine records and exemplary reviews. The sudden shift in treatment of these nurses came only after each began asserting themselves as leaders in PCA in the unit and in the union organizing efforts in their unit. Further, RN [redacted] who was part of the same conversation with [redacted] was only cursorily questioned and not investigated or disciplined. Not coincidentally, [redacted] had not engaged in known union activity up to that date of the alleged incident and did not speak out at the preceding town hall. This disparate treatment again undermines any attempt by the Employer to rebut the *Wright Line* presumption.

The Board also considers a failure of an employer to conduct a fair or comprehensive investigation as a significant factor in finding that the Employer has not met its *Wright Line* burden. See, e.g., *Burger King Corp.*, 279 NLRB 227, 239 (1986). In other words, a failure to conduct a fair and complete investigation "leads to the conclusion that [the employer] was not genuinely interested in knowing the underlying facts and circumstances of the events but, rather, was looking for a pretext to discharge [the employee]." *Amcast Automotive of Indiana, Inc. and John Rowe*, 348 NLRB 836, 850 (2006). This may also constitute evidence of discriminatory motive. *Affinity Med. Ctr.*, 362 NLRB No. 78 (2015).

Although the Employer claims to have conducted a thorough investigation, no evidence was presented to the Nurses to support the findings of the investigation. The nurses requested in their meetings with management related to the disciplines that they be allowed to review the surveillance footage from the event, confident that any review of the actual alleged incident would easily clear their names. Hospital management offered only evasive answers and never allowed the nurses to view the footage. To date, it is not clear whether the Employer bothered to review surveillance footage, or worse, whether footage was reviewed but subsequently suppressed because it did not fit the narrative the Employer was attempting to establish. Further, the RNs were not given a chance to rebut any statements or other accounts of the encounter, lending further credence to the fact that the Employer fabricated these charges in order to eliminate and threaten the leaders of organizing campaign and the most vocal proponents of patient safety within the unit.

It is abundantly clear that the Employer cannot win in an *Atlantic Steel* test or rebut the *Wright Line* presumption. The Employer's proffered excuses for (b) (6), (b) (7)(C) termination and (b) (6), (b) (7) and (b) (6), (b) (7)(C) disciplines are clearly shallow pretexts that barely mask the underlying reasoning: to eliminate a known union supporter in the hospital and swiftly and publically punish the other two key nurse leaders in the unit, each of whom had dared to challenge the Employer in their direct PCA, union organizing efforts, and in filing charges with the Board. In doing so, the Employer sent a terrorizing message to the rest of the (b) (6), (b) (7)(C) nurses in this thinly veiled affront on core Section 7 rights.

III. 8(a)(1) FACTS AND ANALYSIS

A. The Employer Sought to Prohibit (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) from Discussing Their Discipline

Adding insult to injury, at the time RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) were placed on unpaid administrative leave pending investigation, they were instructed in a written statement which was read aloud to each nurse individually to "refrain from contacting staff within your unit or anyone involved" in the incident. Section 7 of the Act protects employees' rights to discuss organization and the terms and conditions of their employment, to criticize or complain about their employer or their conditions of employment, and to enlist the assistance of others in addressing employment matters. *Quicken Loans, Inc. v. NLRB*, 830 F.3d 542, 545 (D.C. Cir. 2016). "Under 'settled Board precedent,' the right to discuss the terms and conditions of employment encompasses the 'right to discuss discipline or disciplinary investigations with fellow employees.'" *Banner Health Sys. v. Nat'l Labor Relations Bd.*, 851 F.3d 35, 40 (D.C. Cir. 2017) (quoting *Inova Health Sys. v. NLRB*, 795 F.3d 68, 85 (D.C. Cir. 2015)).

Employees protected Section 7 right to discuss discipline or ongoing disciplinary investigations involving themselves or their coworkers "are vital to employees' ability to aid one another in addressing employment terms and conditions with their employer." *Banner Health*, 362 NLRB No. 137, slip op. at 3 (2015) (citing *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 5-6 (2014)). An employer may place restrictions on such discussions only where the employer shows that it has a "legitimate and substantial business justification" which

outweighs the employees' rights protecting concerted activity afforded by Section 7 of the Act. *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 15 (2011). The holding in *Hyundai* requires an employer to "first determine whether in any given investigation witnesses need protection, evidence is in danger of being destroyed, testimony is in danger of being fabricated, and there is need to prevent a cover up. Only if the [employer] determines that such a corruption of its investigation is likely to occur without confidentiality is the [employer] free to prohibit its employees from discussing these matters amongst themselves." *Id.*

There is no justification in the instant case for the Employer's prohibition of employees from engaging in communication regarding this disciplinary investigation. There were no witnesses requiring protection, no evidence in danger of being destroyed, and no testimony in danger of being fabricated, especially because each nurse placed on administrative leave pending the investigation was asked questions regarding the alleged incident *before* the gag order was instituted. Further, were the Employer truly concerned with conducting the most accurate investigation, the Employer had every opportunity to gather complete statements from each nurse involved immediately following the alleged incident, but never bothered to do so, once again highlighting the Employer's true motives. As such, this baseless prohibition on communication regarding the disciplinary investigation of (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) is facially unlawful and without justification.

B. The Employer Interrogated (b) (6), (b) (7)(C) and Sought to Prohibit (b) (6), (b) (7)(C) from Discussing [redacted] Colleague's Discipline

RN (b) (6), (b) (7)(C) was overheard in the break room answering a question about (b) (6), (b) (7) (b) (6), (b) (and (b) (6), (b) (7)(C) discipline. (b) (6), (b) responded to the question by telling the other participant in the conversation that the three RNs, though out on administrative leave, were willing to text or talk with any RNs who wanted to speak with them directly. Within hours, (b) (6), (b) (7)(C) was called into (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) office, interrogated about (b) (6), (b conversation, and informed that (b) (6), (b was not to discuss the discipline or the investigation of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7) "inside or outside the hospital." (b) (6), (b) (7)(C) questioned (b) (6), (b) (7)(C) in a pressured and detailed manner about the exact details of when and where (b) (6), (b had spoken with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)((b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that each of the three RNs under investigation had signed a paper advising them that they were not allowed to discuss the discipline or investigation. (b) (6), (b) (7)(C) said that (b) (6), (b would remind them of this fact. (b) (6), (b) then instructed (b) (6), (b) (7)(C) again not to discuss the discipline inside or outside the hospital. (b) (6), (b) (7)(C) recalled that another RN had told (b) (6), (b that (b) (6), (b too had been called in and instructed not to discuss the discipline. This blatant interrogation involving enforcement of a facially unlawful gag order was intended and succeeded in preventing workers from discussing discipline and other working conditions with their co-workers.

Given the Board's decision in *Hyundai*, the employer must make such a determination preliminarily and on an individual, case-by-case basis. Here, Sutter Sacramento is unlawfully promulgating, maintaining, and enforcing a boilerplate rule prohibiting from employees from discussing with coworkers any matters under investigation by the HR department with no

preliminary review to determine that such confidentiality is warranted under the circumstances.

IV. SECTION 10(j) RELIEF

The evidence in this case clearly warrants issuance of complaint, alleging violations of Section 8(a)(1), (3), and (4) of the Act. Additionally, the evidence supports the conclusion that Section 10(j) injunctive relief is needed to provide an appropriate interim remedy pending litigation of the case before the Board.

The unfair labor practices in this proceeding have been committed in California, within the territorial jurisdiction of the United States Court of Appeals for the Ninth Circuit. The applicable principles for Section 10(j) proceedings within this Circuit have been set forth in *Frankl v. HTH Corp.*, 650 F.3d 1334 (9th Cir. 2011). In the Ninth Circuit, a court must determine whether interim injunctive relief under Section 10(j) is "just and proper," employing the use of traditional equitable principles. *Id.* at 1355. In this regard, a Regional Director seeking Section 10(j) relief must establish that:

- There is a likelihood of success on the merits,
- Irreparable harm is likely in the absence of preliminary relief,
- The balance of equities tips in the Director's favor, and
- An injunction is in the public interest.

Ibid. When considering granting injunctive relief under Section 10(j) a court must analyze the request "through the prism of the underlying purpose of Section 10(j), which is to protect the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge." *Miller,* 19 F.3d at 459-60.

A. The "Likelihood of Success on the Merits" Supports Issuance of a § 10(j) Injunction.

"Likelihood of success on the merits" refers to how probable it is that the Board will issue an Order finding that the conduct in question constituted an unfair labor practice and that the U.S. Court of Appeals would grant a petition for enforcement if such enforcement were sought. In the Ninth Circuit, "the Regional Director in a §10(j) proceeding 'can make a threshold showing of likelihood of success by producing some evidence to support the unfair labor practice charge, together with an arguable legal theory.'" *Frankl*, 650 F.3d at 1356.

As set forth above in the Union's argument on the merits of the allegations in the charge, there is ample evidence in support of the unfair labor practice charge and thus a strong likelihood of success on the merits.

B. Irreparable Harm to a Nascent Organizing Campaign Will Occur if Preliminary Relief is Not Granted.

In the light of the Supreme Court's decision in *Winter v. Natural Res. Def. Council,* 555 U.S. 7 (2008), the Ninth Circuit clarified the standard for temporary injunctive relief, requiring some showing of irreparable harm. *Alliance for Wild Rockies v. Cottrell,* 632 F.3d 1127, 1131-32 (**9th Cir.** 2011).

NLRB 10(j) Manual Category 1 and 2 sets forth that preliminary injunctive relief should be considered in all initial organizing campaigns in which the employer's serious unfair labor practices, including threats, improper grant of benefits, unlawful employee discipline, and discriminatory discharge, would irreparably destroy a union's organizing campaign. Under Category 1, the Board considers whether an employer's conduct clearly threatens to "nip in the bud" the union's campaign if not immediately enjoined. As such, a court should order an injunction against the employers' alleged violations and order reinstatement of any discriminatees. See *Aguayo v. Tomco Carburetor Co.*, 853 F.2d 744 (9th Cir. 1988).

General Counsel Memorandum 10-07 instructs that Section 10(j) relief should be especially considered in organizing campaigns involving discriminatory discharges precisely because of the nature of irreparable harm inherent in such serious unfair labor practices:

> Discriminatory discharges are among the most serious nip-in-the-bud violations of the Act. An unremedied discharge sends to other employees the message that they too risk retaliation by exercising their Section 7 rights. As one court has characterized employees' reaction, "no other worker in his right mind would participate in a union campaign in this plant after having observed that other workers who had previously attempted to exercise rights protected by the Act have been discharged and must wait for three years to have their rights vindicated." Silverman v. Whittall & Shon, Inc., 1986 WL 15735, 125 LRRM 2152 (S.D.N.Y. 1986). In addition, the continued absence from the workplace of unlawfully discharged union leaders means not only that the negative message from the unfair labor practices persists but also that the remaining employees are deprived of the leadership of active and vocal union supporters.

(Memorandum GC 10-07, "Effective Section 10(j) Remedies for Unlawful Discharges in Organizing Campaigns," September 30, 2010).

In this case, the Employer targeted nurse leaders with unprecedented discipline and termination in the key fledgling stages of the union organizing campaign. These types of discriminatory discharges and discipline are precisely the kind of "nip-in-the-bud" violations that require Section 10(j) relief. The Employer's targeted assault of union leaders in key union-stronghold units indeed sent a clear message to the rest of the Sutter nurses that they too risk retaliation by exercising their Section 7 rights. As noted in the provided affidavits, these attacks have created an atmosphere of fear and anxiety that has seen support for the Union decline since

(b) (6), (b) (7)(C) termination. As (b) (5), (b) (7)(C) attested in (b) (5), (b) affidavit, (b) (6), (b) (7)(C), (b) (7)(D) . Since July of 2016, CNA has helped to coordinate monthly union organizing meetings for (b) (6), (b) (7)(C) RNs, which are attended by nurse leaders in the unit, each of whom have relationships with and communicate regularly with other union supporters in the Unit. After an initially period of growth towards the end of 2016 and the beginning of 2017, thanks in large part to the organizing efforts of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) attendance has declined since the discipline and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in (b) (6), (b) (7)(of this year. The April and May meetings following the disciplines/termination saw an over 30% drop in attendance, as compared with the three months prior. And as reported to the Union by (b) (6), (b) (7)(C) on June 2, 2017, the most recent union meeting held on June 1 had the lowest attendance of any meeting since November 2016.

Futhermore, a significant number of nurses have directly communicated their fear of potentially being targeted or retaliated against for support of the Union after learning of the disciplines and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) In order to combat the palpable fear and intimidation on the Unit following (b) (6), (b) (7)(C) termination, CNA worked with nurses in the unit to develop a sticker that nurses could wear while on shift demonstrating their support for (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other key nurse leaders have reached out to a majority of the (b) (6), (b) (7)(C) nurses to date to discuss wearing the sticker as a collective demonstration of solidarity and support. Approximately 30% of the nurses contacted expressed fear of retaliation and/or concern about demonstrating union support in front of management based on witnessing the targeted discipline of their colleagues. As a direct result of the fear and intimidation caused by the targeted disciplines/termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) at least 5 RN leaders in the campaign have in fact communicated directly with (b) (6), (b) (7)(C) that they are no longer willing to participate in the union campaign to the degree they were previously involved, and even then would only do so clandestinely, severely impacting the union organizing campaign

Every day that goes by with (b) (6), (b) (7)(C) out of the hospital and (b) (6), (b) (7) and (b) (6), (b) (7)(C) on escalated discipline enforces the message to Sutter nurses that they risk unremedied reprisal if they engage in what are supposed to be protected Section 7 rights. As such, it is imperative that an injunction be sought against the employers' serious violations in order to promptly reinstatement discriminates and correct the discipline of these key Union leaders.

General Counsel Griffin affirmed and expanded the above-quoted Memorandum, instructing that discharges receive elevated priority, but reinforced that other unfair labor practices ought to also receive close 10(j) consideration:

> Cases involving a discharge during an organizing campaign [...] frequently require the most expeditious relief to ensure that employees are not irreparably deprived of [that] right. [...] Of course, the need for 10(j) relief is not limited to cases involving discharges during a union organizing campaign or to protect bargaining for a first contract. [...] The touchstone is always whether there is a threat of remedial failure, that is, whether, in [a] particular case, the unfair labor practices are having an impact on employees' Section 7 rights or the bargaining

> process such that a final Board order will come too late to effectively restore the lawful status quo.

(Memorandum GC 14-04, "Affirmation of 10(j) Program," April 30, 2014). General Counsel Memorandum 11-01 emphasizes the irreparable harm of other violations as well, including interrogation. "If an employer engages in interrogation or surveillance, employees will be less likely to engage in protected activity and express their free choice because of concern that the employer is trying to learn about their views on unionization and that an employee's actions, either by what he says to the employer, or how he behaves around the workplace, will likely be used to affect his job security or result in economic reprisal." (Memorandum GC 11-01, "Effective Remedies in Organizing Campaigns,"

Sutter has engaged in a ruthless anti-union campaign that, in addition to sullying the record of [redacted] nurses and costing [redacted] job, has trampled on the rights of nurses to engage in the most fundamental of protected activities.

As provided in affidavit testimony by [redacted] and [redacted], [redacted]. As demonstrated in the affidavit of [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted]

It is undeniable that the unfair labor practices are having an impact on employees' Section 7 rights and that a final Board order will come too late to effectively restore the lawful status quo at this crucial stage of the organizing campaign. Without 10(j) authorization, this Employer will be emboldened to escalate its unlawful conduct as evidenced by the conduct of the Employer throughout this process. At this juncture, irreparable harm will absolutely occur if preliminary relief is not granted.

B. The Balance of the Hardships Weighs in Favor of Seeking a §10(j) Injunction.

A preliminary injunction is appropriate when the moving party demonstrates "that serious questions going to the merits [are] raised and the balance of hardships tips sharply in the [moving party's] favor." *Alliance for Wild Rockies,* 632 F.3d at 1131-32. When considering the balance of hardships in a Section 10(j) proceeding, a court must consider the possibility that declining to issue the injunction would allow the unfair labor practice to reach fruition and thus render any future Board Order finding unlawful conduct meaningless. See, e.g., *Small v. Avanti Health Systems,* 661 F.3d 1180 (9th Cir. 2011).

The balance of the hardships here weighs heavily in favor of seeking an injunction because without an injunction the Employer's continued unlawful conduct will succeed at chilling protected activity in support of the Union organizing campaign and in support of unfair

labor practice charges against Sutter. The Board's remedial authority would be insufficient because the Employer's conduct will further chill employees' participation in the organizing campaign. Not only will the ground organizing campaign be severely hindered, the Employer's unlawful conduct could effectively chill nurses' willingness to speak out on issues of patient safety and department working conditions. Nurses may be further unwilling to risk their livelihoods and, for example health insurance for their families, in order to contact agencies like DPH or the NLRB, effectively silencing nurses' ability to protect themselves and their patients.

The hardships created by the discharge of employees are particularly instructive. As noted in General Counsel Memorandum 10-07, "with the passage of time, the discharged employees are likely to be unavailable for, or no longer desire, reinstatement when ordered by the Board" and therefore employee resumption of union organizing is unlikely and the ultimate Board order is ineffective to protect rights guaranteed by the Act. The hardship therefore goes beyond (b) (6), (b) (7)(C) losing [redacted] job, but extends to the intimidation created by [redacted] discharge and the incalculable loss of a strong nurse and Union supporters currently unable to organize within [redacted] unit.

The unchecked unlawful acts of management, including interrogation and retaliatory discipline, would also be overwhelmingly detrimental to the organizing campaign, as it would send the message that the Employer may continue to engage in such conduct during this critical organizing stage. Indeed, (b) (6), (b) (7)(C) has become so filled with fear and anxiety that for the first time in [redacted] over (b) (6), (b) (7)(C) career at Sutter, [redacted] has been forced to go out on (b) (6), (b) (7)(C). ([redacted] has since returned to work, but remains under great stress and fear of surveillance because the Employer has, for the first time, forced [redacted] to work with [redacted] accuser, [redacted] (b) (6), (b) (7)(C) Thus, the Union has effectively lost yet another key leader within the hospital. The targeted attacks and unlawful conduct, if left unremedied until a final Board Order issues, perhaps a year from not or more, place the organizing campaign, itself, in jeopardy.

Conversely, requiring the Employer to reinstate (b) (6), (b) (7)(C) to [redacted] positions and revoke the disciplinary action against (b) (6), (b) (7)(C) and [redacted] cannot be deemed a hardship. Each of these nurses have a demonstrated track record as an excellent nurse with outstanding, consistent work evaluations and absolutely no prior discipline, and the Employer has not claimed that any of these nurses played a role in any adverse patient outcome. Reinstatement of (b) (6), (b) (7)(C) pales in comparison to the grave hardships faced by the Union organizing campaign without preliminary relief. In a case like this, there is effectively nothing to balance.

D. Preliminary Relief Is in the Public Interest.

Courts have interpreted "the public interest" in Section 10(j) cases as "ensur[ing] that an unfair labor practice will not succeed because the Board takes too long to investigate and adjudicate the charge." *Miller v. California Pacific Medical Center*, 19 F.3d 449, 460 (9th Cir. 1994). As the Ninth Circuit reasoned in *Frankl v. HTH*, ordinarily when there is a strong showing of likelihood of success and of likelihood of irreparable harm, the Director will have established that preliminary relief is in the public interest.

The evidence on likelihood of success and on the likelihood of irreparable harm set forth above show that a Section 10(j) injunction would be in the public interest.

V. CONCLUSION

The Union requests that you bear in mind that in *Frankl v. HTH Corp.*, 650 F.3d 1334, 1356 (9th Cir. 2011) the Court made clear that "it remains the case. . . that the regional director in a § 10(j) proceeding 'can make a threshold showing of likelihood of success by producing some evidence to support the unfair labor practice charge, together with an arguable legal theory.'" (quoting *Miller v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 460 (9th Cir. 1994)). Such a showing in the Ninth Circuit, the *Frankl* court elaborated, is not a high bar given the deference granted to the regional director by the court. *Frankl,* 650 F.3d at 1356. And as the district court in *Rubin v. Vista Del Sol Health Services, Inc.*, 80 F.Supp.3d 1058, 1100 (C.D. Cal. 2015) determined in considering petitioner's request for the extraordinary remedy of a prelimary *Gissel* bargaining order, petitioner met the burden of producing *some* evidence in support of a preliminary bargaining order. *Even if* the unlawful termination of RN (b) (6), (b) (7)(C) and disciplines of RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7) could be deemed a close call on the merits, there is certainly *some* evidence to support the unfair labor practice allegations, as well as a straightforward and arguable legal theory that, but for these nurses' protected concerted activities, union activities, and participation in an NLRB investigation, (b) (6), (b) (7)(C) and (b) (6), (b) (7) would not be on serious disciplinary corrective action and (b) (6), (b) (7)(C) would still be employed by Sutter Sacramento.

If there are any concerns about seeking Section 10(j) authorization at this time, if the district court were to conclude that likelihood of success has not been established, in the Ninth Circuit the "'serious questions' version of the sliding scale test for preliminary injunctions remains viable after the Supreme Court's decision in *Winter*." *Alliance for the Wild Rockies v. Cottrell,* 632 F.3d 1127, 1134 (9th Cir. 2011) (citing *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7 (2008)). In this regard, the court held that "a preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor. . . so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies,* 632 F.3d at 1134-35. Here, the Union has not only shown the likelihood of irreparable injury, but that such irreparable injury is occurring, continues to occur, and is getting worse, given the evidence of extreme chill presented by the Union. And it is certainly in the public interest to preserve the Board's remedial authority to ensure that the Employer's unfair labor practices do not succeed in killing an organizing drive.

For all of the aforementioned reasons, the Union strongly urges the Region to seek 10(j) relief in this matter to enjoin the Employer from further unlawful actions in violations of these nurses' statutory rights as soon as practicable.

Thank you for your attention to this matter.

Sincerely,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

David Willhoite
Legal Counsel

cc: Janay Parnell, NLRB Region 20 Field Examiner
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA

From: Marie Walcek
To: Parnell, Janay
Cc: David Willhoite; Micah Berul
Subject: Sutter Sacramento 20-CA-197833
Date: Monday, June 12, 2017 1:27:28 PM

Janay,

Wanted to follow up with you on this charge and touch base when you are able. Please let me know when a good time to speak might be.

Thank you,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From:	David Willhoite
To:	Parnell, Janay
Cc:	Marie Walcek; Micah Berul; Roy Hong; Coffman, Jill H.; Vargas, Olivia
Subject:	Supplemental Evidence and Position Statement
Date:	Thursday, June 22, 2017 2:43:12 PM
Attachments:	image001.png SMCS (b) (6), (b) (7)(C) dec_signed.pdf Position Statement RE LaGuardia Addendum.pdf

Good Morning Janay,

As we discussed on the phone yesterday, CNA submits the attached Addendum to our Position Statement of June 6th addressing the *Crowne Plaza LaGuardia* case and the third *Atlantic Steel* factor. We also submit the attached declaration from RN (b) (6), (b) (7)(C) regarding the Employer's knowledge of RN (b) (6), (b) (7)(C) union activity. We will submit later this afternoon another declaration from RN (b) (6), (b) (7)(C) who witnessed the (b) (6), (b) (7)(C) "incident." Thank you for your prompt consideration of this supplemental evidence.

Yours,

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822
www.calnurses.org

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http://www.SinglePayer.com

CALIFORNIA NURSES ASSOCIATION
A Voice for Nurses. A Vision for Healthcare.

Oakland
155 Grand Ave
Oakland, CA 94612
phone: 510-273-2200
fax: 510-663-1625

Via Electronic Filing

June 22, 2017

Janay Parnell, Field Examiner
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

RE: ***Sutter Medical Center, Sacramento***
Cases 20-CA-196911, et al.

Dear Ms. Parnell:

During our phone conversation of June 19, 2017, in response to a question from the California Nurses Association ("Union") regarding the provision of further evidentiary support for the instant charges, you referenced the case *Crowne Plaza LaGuardia*, 357 NLRB 1097 (2011) as informative to the Region's analysis of the facts under the framework provided by *Atlantic Steel*. The Union submits this addendum to its Position Statement of June 6, 2017 to address the relevance of that case. The Union maintains that the accusation that RNs (b) (6), (b) (7)(C) [redacted] or (b) (6), (b) (7)(C) physically threatened and/or touched [redacted] (b) (6), (b) (7)(C) is a ludicrous fabrication. All those witnesses directly involved have stated that neither (b) (6), (b) (7)(C) [redacted] or [redacted] acted with any hint of aggression, let alone physically so, the Employer has not provided any credible evidence to establish such actions, and the long and well-established reputations of the nurses involved, even documented by Sutter management itself, consistently underscores (b) (6), (b) (7)(C) [redacted] and [redacted] roles as compassionate, professional, and temperate leaders in the hospital. However, even granting for the sake of argument the Employer's outrageous contention that (b) (6), (b) (7)(C) made physical contact with [redacted] the context demonstrates that any such contact was inadvertent and would not be cause for (b) (6), (b) (7)(C) to lose protection under the Act.

As the Region can clearly recognize, and as the Union emphasized in its June 6 Position Statement, RNs (b) (6), (b) (7)(C) [redacted] and [redacted] were engaged in protected concerted activity ("PCA") when the alleged incident with [redacted] occurred that led to their respective discipline. Indeed, they had just come from a town hall meeting with Sutter Medical Center, Sacramento ("Sutter") (b) (6), (b) (7)(C), where they raised issues regarding the terms and conditions of their employment with the highest levels of management, and were encouraged by [redacted] to discuss those issues with their supervisors and managers in the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) ("[redacted]") where the nurses work. [redacted] is an (b) (6), (b) (7)(C) in the [redacted] and the discussion in the hallway centered on the placement of a suggestion board for the raising of issues with regard to working conditions and suggestions for their possible solution. The discussion also touched on nurse-to-patient ratios, the leading area of friction and concern for [redacted] RNs regarding their working conditions.

The question raised under the four-part *Atlantic Steel* test is whether, by their conduct, RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) concerted activity lost the protection of the Act. The facts of *LaGuardia* strongly suggests it did not. In *LaGuardia,* the Board held that three employees who *deliberately* and excessively touched their supervisor with an *effort to restrain him* as a means of presenting him with an employee-signed petition forfeited protection under the Act. *Crowne Plaza LaGuardia*, 357 NLRB at 1101 (emphasis added). There, one employee deliberately grabbed the supervisor's shoulder to prevent him from leaving and reached around his waist with the petition; another employee pushed her chest against the supervisor and moved from side to side, deliberately blocking his exit; a third employee deliberately grabbed the supervisor's arm to restrain him from fleeing. *Id.* at 1098. The Board held that such deliberate physical contact "reasonably threatened [the supervisor] and the Respondent's ability to maintain workplace order and discipline." *Id.* at 1101. However, a fourth employee did not forfeit PCA for briefly touching a security guard's wrist as the guard waved his arms to clear a path for the supervisor. *Ibid.* Because the fourth employee did not deliberately touch the security guard with any direct intention to restrain him, her conduct was materially different from the other three employees, and therefore her discipline was protected under the Act, and the Employer violated 8(a)(1) in bringing discipline against her. *Ibid.*

In the present case, under no plausible interpretation could the conduct of RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) be reasonably seen as threatening (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or Sutter's ability to maintain workplace order and discipline. *See Id.* at 1101. (b) (6), (b) (7)(C) **did not** deliberately touch (b) (6), (b) (7)(C) with an effort to restrain (b) (6), (b) *Ibid. Even if* (b) (6), (b) (7)(C) incidentally contacted (b) (6), (b) (7)(C) during their discussion, for example because they were squeezed up against the wall by a passing gurney, such conduct is not sufficient to forfeit protection of the Act. *Ibid.* Sutter nonetheless speciously claims that (b) (6), (b) (7)(C) aggressively touched (b) (6), (b) (7)(C) in an intimidating and threatening manner and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7) physically surrounded (b) (6), (b) (7)(C) and blocked (b) (6), (from walking away. However, this claim is not supported by any facts, even as laid out by the Employer, as (b) (6), (b) (7)(C) did freely walk away from the conversation when (b) (6), (became emotionally agitated in response to the nurses' addressing of unsatisfactory working conditions, including ineffective management communication. Sutter did not present evidence as a result of their sham investigation demonstrating that (b) (6), (b) (7)(C) alleged actions were deliberate. Nor does Sutter show that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7) made a deliberate effort to physically restrain (b) (6), (b) (7)(C) Witnesses maintain that the nurses were not verbally or physically aggressive toward (b) (6), (b) (7)(C) Further, Sutter fails to demonstrate the "particularized proof that specific individuals engaged in the misconduct at issue." *Id.* at 1100.

Rather, Sutter seized on the fact of (b) (6), (b) (7)(C) emotional state to discipline and terminate known (b) (6), (b) (7)(C) and outspoken advocates for the improvement of (b) (6), (b) (7)(C) RN working conditions striking their most ferocious blow in an ongoing busting campaign of lies, threats, and intimidation. It bears stressing that even if (b) (6), (b) (7)(C) bizarrely felt threatened by this "incident," even assuming there was any inadvertent physical contact, (b) (6), (own subjective emotional response is not the standard laid out by the Board in *Atlantic Steel*. Objectively, with all the facts considered, there is no way that a reasonable person would have felt threatened by the conduct of

[redacted] and [redacted] *See Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 29 fn. 2 (D.C. Cir. 2011), enfg. 355 NLRB 708 (2010).

In conclusion, the Union strongly urges the Region to see these ridiculous allegations against RNs with stellar records and decades of experience treating the most vulnerable patients for what they are. The third factor in *Atlantic Steel,* "nature of the conduct," weighs heavily in favor of [redacted] and [redacted] They were simply engaged in a constructive conversation with a supervisor in their unit on the heels of being urged to do so by the [redacted] of the hospital. If any contact occurred in that hallway on [redacted], it was certainly inadvertent, was not the cause of [redacted] emotional display, and did not result in [redacted] egress being blocked in any fashion. An examination of the facts of this case under *LaGuardia* and *Atlantic Steel* demonstrate that [redacted] and [redacted] concerted activity remained protected.

Thank you for your attention to this matter.

Sincerely,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

David Willhoite
Legal Counsel

cc: Jill Coffman, NLRB Region 20 Regional Director
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA

County of Sacramento
State of California

Sutter Medical Center Sacramento
20-CA-197833

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C) hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I have worked as an RN at Sutter since (b) (6), (b) (7). I presently work in the (b) (6), (b) (7)(C) at Sutter. I formerly worked in the (b) (6), (b) (7)(C) (b) (6), (b) (7) ("(b) (6), (b) (7)(C)") at Sutter.

2. Around December 2016, I became aware that nurses at Sutter were organizing to form a union with the California Nurses Association ("Union" or "CNA").

3. On or around the morning of January 31, 2017, (b) (6), (b) (7)(C) the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) of the (b) (6), (b) (7)(C) called me into (b) (6), (b) office. When I arrived at (b) (6), (b) office, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) of the (b) (6), (b) (7)(C), were both present. At the meeting, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) said they had received a complaint about me soliciting coworkers on behalf of the Union organizing campaign at the facility. I replied that I had not been soliciting coworkers, but rather had been discussing the Union campaign generally. I told (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that I knew the Union was present at the hospital and knew people who were involved. I told (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that it was my understanding that nurses were allowed to talk about the Union at work. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) affirmed my understanding but stated that they had heard I was talking to my colleagues about who to contact if they wanted to get more involved

and such conduct was against Hospital policy during work-time. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) offered me a copy of the Hospital's Solicitation Policy, but I responded that I did not need a copy and would stop talking about the Union during work-time. After that conversation I went back to work to finish my shift.

4. About an hour later at the end of my shift, I called (b) (6), (b) (7)(C) and asked if I could speak with (b) (6), (b) again. (b) (6), (b) replied that (b) (6), (b) was available so I went to meet (b) (6), (b) in (b) (6), (b) office. I wanted to discuss more generally my standing at work, as I had some concerns about my position and status. During our conversation, I mentioned that nurses working on nightshift were not happy about some of the working conditions at the Hospital. (b) (6), (b) (7)(C) responded that (b) (6), (b) was aware of the discontent and did not understand why nurses were reaching out to the Union instead of talking with their supervisors and/or administration to address their issues. I mentioned that one of the nightshift nurses I had spoken to about the Union campaign was (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) responded that (b) (6), (b) already knew all about (b) (6), (b) (7)(C) Union involvement. (b) (6), (b) (7)(C) asked me if I knew that (b) (6), (b) (7)(C) was getting paid by the Union for the organizing work that (b) (6), (b) was doing. (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was being paid for every person (b) (6), (b) signed up for the Union. I responded saying I was not aware of that.

I have read this Confidential Witness Declaration, consisting of 2 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2017 in Placerville, California.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From:	David Willhoite
To:	Parnell, Janay
Cc:	Marie Walcek; Micah Berul; Roy Hong; Vargas, Olivia; Coffman, Jill H.
Subject:	(b) (6), (b) (7)(C) Declaration
Date:	Thursday, June 22, 2017 7:46:22 PM
Attachments:	image001.png SMCS (b) (6), dec_signed.pdf

Hi Janay,

Please find attached the declaration from RN (b) (6), (b) (7)(C) Thanks again for the last minute consideration of this additional supporting evidence.

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822
www.calnurses.org

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County of Sacramento
State of California

Sutter Medical Center, Sacramento
Case 20-CA-196911 et al.

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C), hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I have worked as an RN at Sutter since (b) (6), (b) (7)(C). I presently work the (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") at Sutter. I have been an RN in the (b) (6), (b) (7)(C) for approximately (b) (6), (b) (7)(C) Prior to that, I worked in (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

2. RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also work as RNs in the (b) (6), (b) (7)(C) with me. Having worked alongside (b) (6), (b) (7) (b) (6), (b) and (b) (6), (b) (7) in (b) (6), (b) (7)(C) for the past (b) (6), (b) (7)(C), I have come to know each of them well. I know (b) (6), (b) exceptionally well because we both work the same shift (b) (6), (b) (7)(C)). In all my years working alongside (b) (6), (b) (7) (b) (6), (b) and (b) (6), (b) (7)(C) I have never heard anything negative about any of them. I know (b) (6), (b) (7) (b) (6), (b) and (b) (6), (b) (7) to be well-respected throughout our unit.

3. I first became involved in the union organizing campaign with the California Nurses Association ("CNA" or "Union") in February 2016. I first learned of the Union campaign through speaking with (b) (6), (b) (7) I know that (b) (6), (b and (b) (6), (b) (7) have also been involved in the Union organizing campaign. Around February 2016, two (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") approached myself and a group of nurses on our shift. I do not want to mention their names. They said that they had heard there was going to be a Union meeting for Sutter nurses. They told

the group of us that it was within our rights to attend the Union meeting, but they warned us against signing anything because they said it would be considered a vote.

4. On [redacted], 2017, Sutter [redacted] held a town hall meeting for nurses in the [redacted]. Most [redacted] nurses attended the town hall meeting, including myself, [redacted], and [redacted] and [redacted] asked the majority of the questions and were the most outspoken among the [redacted] nurses at the meeting. Many of the nightshift nurses had given questions to [redacted] for [redacted] to ask. I know [redacted] had prepared lists of several questions which they asked at the town hall. Several other nurses also asked one or two questions each. I asked one or two questions as well. I do not remember what I asked. During the meeting, [redacted] suggested putting up a comments board in the Unit. On that board, nurses were to work together to write down issues and make suggestions as to how to solve them, or how to make improvements in the Unit.

5. After the town hall meeting, I left the room with [redacted] and clocked out. [redacted] and I noticed that [redacted] and [redacted] were standing in the hallway talking with ANM [redacted] and I approached [redacted] and [redacted] in the hallway. They were speaking about the best location for the comment board in the Unit. I made a light-hearted comment about suggesting a pizza party. [redacted] and [redacted] continued talking with [redacted] about how to best utilize the comment board in an effective manner as [redacted] had suggested at the town hall meeting. At no point did the conversation seem hostile or aggressive. After a few minutes of listening, I walked about 10 feet away to speak to two other nurses. I don't recall which nurses I was speaking with. While I was talking with the other two nurses, I did not hear any raised voices or detect any signs of aggression coming from the conversation with [redacted] and [redacted] nearby.

6. After a few more minutes, one of the nurses I was talking to stated that [redacted] was crying. I turned around and saw [redacted] crying. [redacted] then said, "It's not fair, it's not fair, I'm

human too." [redacted] then turned and walked off down the hallway toward the elevator. Still standing in the same spot with [redacted] and [redacted], [redacted] called to [redacted] "come back." [redacted] shouted, "I don't want to talk to you," as [redacted] leaving. [redacted] did not chase after [redacted] [redacted] exited into an elevator and presumably went upstairs. The rest of the group of nurses looked around at each one another quizzically wondering what had happened. [redacted] then asked the group whether [redacted] should go upstairs and try to talk to [redacted]

7. [redacted] then went upstairs with [redacted] to try to talk to [redacted] I was about to leave when I encountered a co-worker who had been on shift during the town hall meeting. [redacted] asked me how the town hall went and what had happened during the meeting. I stayed and spoke with [redacted] for approximately 5 minutes about the town hall. While I was talking to [redacted] [redacted] and [redacted] came downstairs, and [redacted] was crying. [redacted] told us that [redacted] was refusing to speak with [redacted]

8. Two or three days later, I received a call from (b) (6), (b) (7)(C) in Human Resources. [redacted] asked me if I had witnessed any aggressive behavior after the town hall meeting. I said that I had not, and asked [redacted] to clarify. [redacted] asked me specifically if I had witnessed any aggressive behavior on the part of [redacted] [redacted] or [redacted] towards [redacted] I told [redacted] that I did not. I related to [redacted] what I observed on April 11th just as I have in this Declaration. This was the only time management contacted me to ask about the events of that day.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 22, 2017 in San Francisco, California.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: Marie Walcek
To: Parnell, Janay
Cc: Micah Berul; David Willhoite
Subject: Re: Sutter Sacramento
Date: Tuesday, June 27, 2017 7:34:29 PM

Thank you.

Sent from my iPhone

> On Jun 27, 2017, at 4:17 PM, Parnell, Janay <Janay.Parnell@nlrb.gov> wrote:
>
> The deadline is close of business tomorrow.
>
> Janay Parnell
> Field Examiner - Sacramento Resident Agent
> National Labor Relations Board
> 901 Market Street, Suite 400
> San Francisco, CA 94103
>
> Phone: (202) 406-0912
> Fax: (415) 356-5156
>
> -----Original Message-----
> From: Marie Walcek [mailto:MWalcek@calnurses.org]
> Sent: Tuesday, June 27, 2017 4:12 PM
> To: Parnell, Janay <Janay.Parnell@nlrb.gov>
> Cc: Micah Berul <MBerul@CalNurses.Org>; David Willhoite <DWillhoite@CalNurses.Org>
> Subject: Sutter Sacramento
>
> Hi Janay,
>
> Just wanted to check in with you on the Union and nurses' timeline for getting back to you on our decision RE dismissal/withdrawal. From our phone call we understood that we would need to get back to you with an answer on that by tomorrow (Wednesday) but one of the nurses said that in (b) (6), phone call with you (b) (6), thought you had said (b) (6), (b) (6), had to respond by today. We think (b) (6), may have just misheard/misunderstood you so we clarified with (b) (6), that doesn't have to get back on that until tomorrow. If that's incorrect please let us know. Otherwise we will be in touch tomorrow.
>
> Thanks,
> Marie
>
> Sent from my iPhone

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

June 29, 2017

MARIE K. WALCEK, LEGAL COUNSEL
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. WALCEK:

We have carefully investigated and considered your charge that Sutter Medical Center, Sacramento has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the following allegations because there is insufficient evidence to establish that the Employer violated Section 8(a)(1), (3), and (4) of the Act by engaging in the following conduct: (1) placing three employees on administrative leave in retaliation for their protected concerted and/or union activities; (2) disciplining two employees in retaliation for their protected concerted and/or union activities; and (3) terminating an employee in retaliation for [redacted] protected concerted and/or union activities.

The remaining allegations regarding the Employer's maintenance and enforcement of an unlawful policy that prohibits employees from discussing workplace investigations with their coworkers, and its interrogation of, and threat to, one employee regarding the aforementioned policy will remain subject to further processing.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **July 13, 2017**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than July 12, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before July 13, 2017.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after July 13, 2017, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/

DANIEL J. OWENS
Acting Regional Director

Enclosure

cc: CALIFORNIA NURSES ASSOCIATION (CNA)
155 GRAND AVE
OAKLAND, CA 94612

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH - OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

_____

Case Name(s).

_____

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____

(Signature)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 MARKET STREET, SUITE 400
SAN FRANCISCO, CA 94103-1735
An Equal Opportunity Employer

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MARIE K. WALCEK, LEGAL COUNSEL
155 GRAND AVE
OAKLAND, CA 94612

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

June 29, 2017

MARIE K. WALCEK, LEGAL COUNSEL
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. WALCEK:

We have carefully investigated and considered your charge that Sutter Medical Center, Sacramento has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the following allegations because there is insufficient evidence to establish that the Employer violated Section 8(a)(1), (3), and (4) of the Act by engaging in the following conduct: (1) placing three employees on administrative leave in retaliation for their protected concerted and/or union activities; (2) disciplining two employees in retaliation for their protected concerted and/or union activities; and (3) terminating an employee in retaliation for [redacted] protected concerted and/or union activities.

The remaining allegations regarding the Employer's maintenance and enforcement of an unlawful policy that prohibits employees from discussing workplace investigations with their coworkers, and its interrogation of, and threat to, one employee regarding the aforementioned policy will remain subject to further processing.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **July 13, 2017**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than July 12, 2017. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

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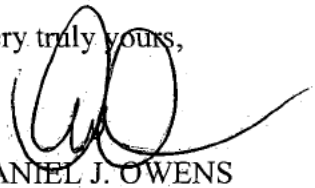
Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



DANIEL J. OWENS
Acting Regional Director

Enclosure

cc: CALIFORNIA NURSES ASSOCIATION (CNA)
155 GRAND AVE
OAKLAND, CA 94612

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH - OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

_____

Case Name(s).

_____

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____

(Signature)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date: 07/13/17

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Sutter Medical Center, Sacramento
Case Name(s).

20-CA-197833
Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

Marie Walcek, Legal Counsel
California Nurses Association (CNA)
155 Grand Ave.
Oakland, CA 94612
Telephone: 510-433-2742
Facsimile: 51-663-4822
E-mail: mwalcek@calnurses.org

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, and not a party to the within action; that my business address is 155 Grand Ave., Oakland, California 94612.

On the date below, I served a true copy of the following document:

APPEAL FORM (20-CA-197833)

Via Electronic Mail addressed as follows:

Jatinder K. Sharma
Sutter Health, Office of the General Counsel
2200 River Plaza Dr.
Sacramento, CA 95833
E-mail: SharmaJ1@sutterhealth.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 13, 2017

Tym Tschneaux

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

July 14, 2017

MARIE K. WALCEK
LEGAL COUNSEL
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. Walcek:

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

Mark E. Arbesfeld

By: _____
Mark E. Arbesfeld, Acting Director
Office of Appeals

cc: JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
901 MARKET ST STE 400
SAN FRANCISCO, CA 94103-1738

CALIFORNIA NURSES ASSOCIATION (CNA)
155 GRAND AVE
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2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

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CALIFORNIA
NURSES
ASSOCIATION

155 Grand Ave
Oakland, CA 94612
phone: 510-273-2200
fax: 510-663-1625

A Voice for Nurses. A Vision for Healthcare
www.calnurses.org

Via NLRB Electronic Filing

July 18, 2017

Richard F. Griffin, Jr., General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-197833

Dear Mr. Griffin,

The California Nurses Association ("CNA" or "Union") hereby appeals the decision of the Regional Director of Region 20 to partially dismiss the above-referenced unfair labor practice charge filed against Sutter Medical Center, Sacramento ("Sutter" or "Employer"). This appeal involves a textbook case of an employer wielding unbridled power in the workplace to send an unequivocal message designed to halt a union organizing campaign by firing a high profile union supporter and disciplining two others for exercising their right to speak up on behalf of their coworkers. This case is unusual in three important respects justifying close scrutiny on appeal. First, the Employer falsely accused a long serving registered nurse with a flawless record of engaging in "workplace violence" allegedly directed at a [redacted] – a criminal, or at a minimum, quasi-criminal charge – unsupported by the record. Second, the Region conflated the applicable legal standard, erroneously crediting the Employer's conclusion based on the Region's assertion that the Employer conducted a "thorough" and "unbiased" investigation in the face of directly contrary, consistent reports provided by the several staff nurses who were present when the alleged "workplace violence" occurred. Third, the Region deemed certain witnesses to be "neutral" and therefore gave their testimony added weight without any objective supporting evidence, thereby inappropriately making flawed credibility determinations in the investigatory stage.

Specifically, during an initial organizing campaign, the Employer disciplined three primary Union supporters, including terminating a key nurse leader, alleging that the nurses engaged in workplace violence in the midst of protected, concerted activity ("PCA"). Despite sworn statements from four nurses involved stating that no inappropriate physical or otherwise aggressive misconduct took place, the Region based its decision on the Employer's supposed good faith investigation, erroneously morphing *Atlantic Steel* and *Wright Line* analysis. Stunningly, the Region saw the Employer's account of what occurred as more "neutral," implicitly and improperly rendering credibility determinations of the accounts in the Employer investigation and discounting the contradictory witness statements provided by those nurses directly involved in the alleged incident. For the reasons set forth below, the Decision to Partially

Dismiss must be reversed, or the Region should consider this appeal as a motion for reconsideration in light of the additional evidence and argument set forth in this appeal. Upon a careful review of the evidence, it is abundantly clear that complaint should issue with regard to all allegations in the charge filed by Union and the related charges filed by the individual nurses who were disciplined.

Background

Unfair Labor Practice charges were filed with Region 20 of the National Labor Relations Board ("the Region") by Sutter registered nurses ("RN"s) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] on April 13, 2017 (Case Nos. 20-CA-196911, 20-CA-196918, 20-CA-196913, respectively), by RN (b) (6), (b) (7)(C) on April 25, 2017 (Case No. 20-CA-197780), and by the Union on April 28, 2017 (Case No. 20-CA-197833) alleging, collectively, that Sutter violated Sections 8(a)(1), 8(a)(3) and 8(a)(4) of the National Labor Relations Act ("the Act") by:

- Placing three employees on administrative leave in retaliation for their protected concerted and/or union activities;
- Disciplining two employees in retaliation for their protected concerted and/or union activities;
- Terminating an employee in retaliation for [redacted] protected concerted and/or union activities;
- Maintaining and enforcing an unlawful policy prohibiting employees from discussing investigations of alleged employee misconduct and/or discipline of employees;
- Interrogating employees about their protected activities; and/or
- Threatening employees with reprisals for their protected activities.

The allegations were supported by the affidavit testimony of RNs [redacted] and [redacted] as well as (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and all of the documentary evidence attached thereto. The allegations were also supported by the sworn declarations of RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) The Employer provided no objective evidence to refute the charges. Rather, the Employer provided the Region with a copy of its own internal investigation documents, which included third-hand hearsay accounts of what the Employer concluded to be "workplace violence," as reported and documented by the Employer's direct agents. According to the Region, several accounts as reported by the Employer contradicted the sworn statements of [redacted] The Employer further claimed that it had no knowledge of any of the RNs involvement in or support of any Union organizing efforts at the facility. This claim was directly rebutted by sworn testimony provided in support of the charge.

On June 29, 2017, the Region issued a partial dismissal of those allegations based on the disciplines of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] In its dismissal letter the Region stated that there was insufficient evidence to establish that the Employer engaged in the following conduct: (1) placing three employees on administrative leave in retaliation for their protected concerted and/or union activities; (2) disciplining two employees in retaliation for their protected concerted and/or union activities; and (3) terminating an employee in retaliation for [redacted] protected concerted and/or union activities. The remaining allegations regarding the Employer's maintenance and

enforcement of an unlawful policy prohibiting employees from discussing workplace investigations with their coworkers, and its interrogation of and threats to RN (b) (6), (b) (7)(C) regarding the aforementioned policy were found meritorious and remain subject to further processing.

Statement of Facts

With deteriorating working conditions creating unsafe staffing assignments among a host of other serious workplace issues, nurses in the (b) (6), (b) (7)(C) ("[redacted]") at Sutter Sacramento began in recent years to increase collective efforts to improve working conditions and advocate for better staffing, patient safety, and communication with management. Sutter [redacted] RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] rose as known leaders in their unit, gathering grievances from coworkers and bringing collective concerns to management in an attempt to better the working conditions in the unit.

They advocated via meetings and letters to their managers and even reported the hospital's unsafe practices to the State Department of Public Health, which stepped in temporarily to address unsafe staffing, but the [redacted] nurses' concerns were ignored by management. The ratio of nurses to patients remained at unsafe levels, and nothing was done to coordinate the assignments of patients to nurses in a way that made sense given the physical space in which the unit operates. With these serious concerns going unaddressed, [redacted] reached out to CNA in early 2016 to discuss the potential for unionization at the facility. [redacted] discussed these issues and the potential for union representation with [redacted] colleagues, including [redacted] and [redacted] (b) (6), (b) (7)(C) [redacted] and [redacted] quickly became established and recognized leaders in the effort, regularly meeting with CNA organizers, attending meetings, and talking to coworkers about unionizing.

(b) (6), (b) (7)(C) [redacted] and [redacted] leadership in these areas did not go unnoticed by Sutter. Sutter targeted [redacted] in particular. At least as far back as January of this year, Sutter began a concerted campaign to discredit [redacted] actions on behalf of the Union organizing campaign. On or around January 31, 2017, (b) (6), (b) (7)(C) [redacted] expressly told [redacted] RN (b) (6), (b) (7)(C) that Sutter management already knew all about [redacted] Union involvement. (See Confidential Witness Declaration of (b) (6), (b) (7)(C) dated June 20, 2017, at ¶¶ 3-4.) [redacted] went on to state that the Union paid [redacted] for [redacted] activities, an absolute falsehood and a clear attempt by management to actively discredit [redacted] and undermine the Union efforts more broadly. Sutter would later go on to claim that at the time of [redacted] termination and [redacted] and [redacted] disciplines, that management had no knowledge of the involvement of those disciplined in any union organizing campaign, a flat out lie given the testimony in [redacted] declaration.

With management becoming increasingly aware of the discontent in the [redacted] and of the nurses' discussions of unionization, newly appointed (b) (6), (b) (7)(C) announced a town hall event to be held in the unit on [redacted] 2017 to discuss concerns and attempt to quell the organized efforts of the nurses to improve working conditions and patient safety in the unit. At

the town hall meeting, with several layers of management in attendance, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) shared the nurses' collective concerns regarding an array of unsatisfactory working conditions. (See Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 4/21/17 ("(b) (6), (b) (7)(C), (b) (7)(D) Affd.") at pp. 9-12.) (b) (6), (b) (7 also voiced specific concerns about staffing ratios on the unit, the predominant ongoing and shared concern for nearly all of the (b) (6), (b) (7)(C) nurses. (See Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/3/17 ("(b) (6), (b) (7) Affd.") at pp.3-4.) (b) (6), (b) (7)(C) made several assurances that nurses would not be disciplined for speaking out and insisted that the nurses communicate concerns to their immediate supervisors to develop solutions following the town hall. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/1/17 ("(b) (6), (b) (7)(C), (Affd.") at pp.8-9.)

Following (b) (6), (b) (7)(C) direct instruction and with a good faith belief that their concerns might finally be heard, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and RN (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) immediately following the meeting to further discuss their concerns and ideas about improving working conditions. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) talked about a suggestion board for their Unit, nurse-to-patient ratios, and communication between nurses and their (b) (6), (b) (7)(C) The nurses and (b) (6), (b) (7)(C) were standing in a circle in the hallway outside the conference room used for the town hall, away from patients and working areas. Undoubtedly facing intense pressure from higher levels of Sutter management to control and contain the unionizing efforts of the (b) (6), (b) (7)(C) nurses while at the same time being tasked with addressing their concerns, (b) (6), (b) (7)(C) became upset and defensive when the conversation turned to things like unsafe nurse-to-patient ratios, something (b) (6), (b) (7)(C) acknowledged was a legitimate problem but not one (b) (6), (personally could control. ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at pp 12-13). Throughout the conversation, (b) (6), (b) (7)(C) repeatedly put (b) (6), (hand up and interrupted the nurses with rebuttals to nearly every concern raised. (b) (6), (b) (7)(C), (b) (7)(D) pointed out that this style of communication from management was ineffective, and reflected back to (b) (6), (b) (7)(C) (b) (6), (hand gesture in an effort to demonstrate how it inhibited constructive conversation. (b) (6), (b) (7)(C) was flustered by the remark and abruptly walked away from the conversation, down the hall yelling, "I'm only human." ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at 13; (b) (6), (b) (7 Affd. pp. 4-6; (b) (6), (b) (7)(C), (Affd. at p. 10; Confidential Witness declaration of (b) (6), (b) (7)(C) dated 7/10/17 pp. 1-2.).)

At no point did (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7 physically touch or restrain (b) (6), (b) (7)(C) nor did they intentionally intimidate or harass (b) (6), (b) (Id.) The nurses were all standing at comfortable, conversational distances from each other and (b) (6), (b) (7)(C) At one point, a transport isolette carriage was pushed through the same hallway, causing the group to temporarily stand closer together to make room ((b) (6), (b) (7 Affd., p. 6), but at no point during the conversation was (b) (6), (b) (7)(C) physically blocked from exiting the conversation. (b) (6), (b) (7)(C) abrupt and emotional exit from the conversation surprised and confused (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) given the mundane nature and tenor of the conversation.

(b) (6), (b) (7)(C), (b) (7)(D) was so taken aback by (b) (6), (b) (7)(C) outburst and unexpected departure from the conversation that (b) (6), (called after (b) (6), (b) telling (b) (6), (that (b) (6), (didn't mean to hurt (b) (6), (feelings. ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at 13). After brief discussion with the other nurses present, (b) (6), (b) (7)(C), (b) (7)(D) attempted to find (b) (6), (b) (7)(C) to see what had happened and apologize if (b) (6), (had inadvertently offended (b) (6), (b) (6), (b) (7)(C), (b) (7)(D) made (b) (6), (way up to the 7th floor where (b) (6), (b) (7)(C) had gone, but before (b) (6), (b) (7)(C), (b) (7)(D) could

reach [redacted] another [redacted] stopped [redacted] and told [redacted] that [redacted] would not be allowed to speak to [redacted] began to cry [redacted] disappointed that [redacted] was so sensitive about an honest effort to breakthrough [redacted] off-putting communication style and concerned that, once again, no progress had been made on addressing the serious working condition concerns raised by the nurses. ([redacted] Affd., pp.13-14.)

The next day, [redacted] and [redacted] were each called in to speak with management separately. Management questioned the nurses about their conversation the day prior with [redacted] and handed each nurse paperwork informing them that they were being placed on unpaid leave pending an investigation into an absurd allegation of workplace violence. The nurses consistently denied that any aggressive behavior or misconduct took place and implored Sutter to review any and all surveillance footage from the day prior to clear their names. Sutter paid little mind to the accounts of these long-time RNs without any prior incidents of misconduct, let alone "violence." And in added insult, Sutter unlawfully prohibited the nurses from speaking with any of their colleagues about their unprecedented disciplinary investigation. In enforcing this unlawful policy, the Employer went so far as to interrogate and threaten an uninvolved nurse, [redacted] for discussing what [redacted] had heard of the disciplines with [redacted] coworkers. (See Confidential Witness declaration of [redacted] dated 5/11/17). Stunned at the egregious accusations, each of the nurses filed an unfair labor practice charge with the National Labor Relations Board ("NLRB"). Days later, Sutter terminated [redacted] and placed [redacted] and [redacted] on a corrective action plan equivalent to a last chance agreement.

The termination notice issued to [redacted] states that [redacted] engaged in "a serious violation of [the Employer's] Disruptive Behavior and Workplace Violence policy [and that] [d]ue to the serious nature of this incident, [redacted] employment is terminated effective today." (See Supplemental Confidential Witness Affidavit of [redacted] dated 5/4/17 ("Supp. [redacted] Affd."), Exhibit 1.) The version of the incident described in the termination notice is so completely at odds with the sworn affidavits of the three staff nurses who were accused of misconduct as to conjure images of an Orwellian universe where egregious distortion of facts passes for truth justifying the harshest imaginable consequences for those who simply speak their minds in an effort to have legitimate concerns addressed. The three nurses who were engaged in the conversation with [redacted] unequivocally deny that there was any physical touching or even a raised voice by anyone other than the [redacted] They also consistently deny that there was any effort to back the [redacted] up against a wall, or to prevent [redacted] from leaving the conversation at any time.

A fourth nurse who was also involved in the conversation, [redacted] additionally provided a sworn declaration that was included in the initial Board investigation describing what [redacted] observed about the incident that led to the disciplines and termination. (See Confidential Witness Declaration of [redacted] dated June 22, 2017.) [redacted] said that [redacted] approached the circle and made a lighthearted suggestion to conduct a pizza party. After listening to the conversation for a few minutes, [redacted] then walked about ten feet away to talk to two other nurses and relayed that, "[a]t no point did the conversation seem hostile or aggressive." [redacted] states that after a few minutes, one of the nurses [redacted] was talking to observed that the [redacted] was crying. [redacted]

then heard the [redacted] say, "It's not fair, it's not fair. I'm human too." [redacted] observed the [redacted] turn and walk away and heard [redacted] call to [redacted] to "come back." The [redacted] shouted, "I don't want to talk to you" in response. [redacted] was called by Human Resources office a few days later and questioned by phone about whether [redacted] had observed any aggressive behavior against the [redacted] by [redacted] or [redacted] after the town hall meeting. [redacted] said that [redacted] had not and described the incident "just as [[redacted] had] in this Declaration."

A fifth nurse, [redacted] provided new evidence in the form of a Confidential Witness Declaration on July 10, 2017, after the Region's decision to dismiss the Union's charge, swearing under penalty of perjury that [redacted] was in very close proximity to the conversation in question. **That new evidence is submitted hereto as Exhibit 1.** [redacted] states that while "the conversation seemed passionate," "[t]here was no yelling or touching going on and there was nothing about the conversation that [redacted] observed that made [redacted] concerned or worried." As [redacted] waited for a coworker near the ongoing conversation, [redacted] heard the [redacted] raise [redacted] voice, "but did not hear anyone else with a raised voice." [redacted] was not interviewed by Sutter prior to Sutter's decision to terminate [redacted] and issue serious discipline to [redacted] and [redacted] Notably, the Employer's attorney met with Nurse [redacted] on May 5 to ask [redacted] what [redacted] observed and [redacted] recounted precisely what is contained in [redacted] Declaration filed herewith. Sutter's attorney specifically asked [redacted] whether [redacted] observed any physical touching and whether [redacted] observed any conduct that would have made it difficult for the [redacted] to extricate [redacted] from the conversation and [redacted] answered both questions in the negative. At [redacted] request, [redacted] also recounted for [redacted] precisely who was present so that [redacted] could conduct a thorough investigation, though Sutter made no move to change its course of discipline upon hearing this additional exonerating evidence.

The Employer's Policy on Disruptive Behavior and Prevention of Workplace Violence is, on its face, designed to prevent violence defined in criminal statutes including "physical assault with or without a weapon, robbery, bomb threats, possession of a weapon, [and/or] a specific threat to hurt another person or property." (See Exhibit 5 to [redacted] Affd.at p. 2.) It also proscribes "disruptive behavior defined as "[a]ny incident in which the delivery of care or services is interrupted or impeded" and "threatening behavior, including [...] throwing or kicking objects, threatening to harm people directly or indirectly and intimidating actions, including: blocking pathway, leering, stalking." (Id.) There is no allegation of disruption of patient care and to the extent the disciplined and terminated nurses were accused of violent and/or threatening behavior, the evidence on that is, to say the least, disputed. Five registered nurses who were present for the incident deny under penalty of perjury that the nurses who were disciplined engaged in any threatening or inappropriate behavior. They admit that the [redacted] who was offended was clearly upset to the point of crying, but an emotional response on the part of the [redacted] does not mean that employees engaged in a dialogue intended to bring about constructive improvements in their working conditions acted inappropriately. The nurses involved adamantly dispute that the [redacted] was touched, or that [redacted] path was blocked.

Following the issuance of disciplines for [redacted] and [redacted] and termination of [redacted] the Union filed the charge in Case 20-CA-197833, alleging Section 8(a)(1), (3), and (4)

violations based on the unlawful disciplines and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) the maintenance and enforcement of an unlawful policy prohibiting employees from discussing workplace investigations, and the interrogation and threats made to (b) (6), (b) (7)(C) regarding the aforementioned policy.

The targeted discipline of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) was clearly retaliatory and a shameless, blatant affront on core Section 7 rights in an attempt to ruthlessly suppress collective organization. These nurses, with a combined 60 years at Sutter, all had spotless records and stellar evaluations. Their reputations in the hospital were all as exemplary nurses and compassionate advocates for the hospitals smallest, most vulnerable patients. Sutter's pernicious actions have sullied the reputations of these nurses and threatened their very livelihoods. The organizing campaign at the facility is also now under serious threat, as news quickly spread of (b) (6), (b) (7)(C) termination and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) disciplines. (See Union position statement requesting Section 10(j) relief and accompanying evidence in the Regional Casefile.) The resounding sentiment from nurses at the hospital is that if Sutter could fire someone like (b) (6), (b) (7)(C) for (b) (6), (b) workplace advocacy and Union efforts, Sutter could fire *anyone*. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/11/17 at p. 6-7.) Attendance at Union meetings is down and continues to fall, known supporters are now afraid to speak publically about the Union or to make their support visibly known, and once-leaders in the campaign have scaled back their involvement for fear of retaliation. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/31/17). Even worse, with the Region's move to dismiss these most serious affronts, nurses throughout the hospital now feel as though they have no recourse for even the most blatant retaliatory attacks and are therefore more frightened than ever to engage in what are supposed to be protected activities.

As described below, the Region erred in its partial dismissal of the charges outlined above. The impact this error has had on this crucial stage in the organizing campaign cannot be understated. It is imperative that this improper dismissal be reversed so that these nurses can be vindicated and the severe chill at the facility can be addressed.

Analysis

I. The Region Improperly Relied on the Employer's "Good Faith" Investigation

Where an employer has discharged or disciplined an employee because of alleged misconduct in the course of protected activity, the applicable standard for determining whether the disciplinary action(s) are unlawful is set forth in *NLRB v. Burnup & Sims. See Taylor Motors, Inc. & Am. Fed'n of Gov't Employees (Afge), Afl-Cio, Local 2022*, 365 NLRB No. 21 (2017).

The Union and charging nurses have consistently maintained that neither (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7) engaged in any misconduct that could warrant Employer discipline. While the Union acknowledges the Employer's stated reasons for discipline and termination, namely that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) acted "aggressively" toward (b) (6), (b) (7)(C) each of the involved nurses' sworn affidavits, in addition to the sworn declarations of witnesses (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)[1], directly refute the accounts put forward by Sutter. The Region, in making its determination, incorrectly placed emphasis on the Employer's "thorough" and supposedly "unbiased" investigation. This led the Region to conclude that whether or not misconduct actually occurred, the Employer had a reasonable belief that such misconduct occurred and as such was justified in its issuance of the disciplines and termination. However, this misguided standard of review is not supported by any applicable case law or accepted Board analysis.

It is clearly established that the alleged misconduct of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) occurred during the course of protected, concerted activity ("PCA"). To the Union's knowledge, the Employer has not disputed this fact[2] and regardless, the Region has acknowledged that the evidence clearly demonstrates that the alleged misconduct that was the basis of the disciplines and termination occurred during the course of recognized and undeniable PCA. As such, the Region should have first applied the appropriate *Burnup & Sims* analysis, which holds that an Employer violates section 8(a)(1) if it disciplines or discharges an employee for misconduct arising out of a protected activity when it can be shown that the misconduct never occurred. *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23, 85 S. Ct. 171, 172, 13 L. Ed. 2d 1 (1964) (citing *Mid-Continent Petroleum Corp.*, 54 NLRB 912, 932—934; *Standard Oil Co.*, 91 NLRB 783, 790—791; *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611.) Under the *Burnup & Sims* analysis, "8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct." *Ibid.*

Relevant to the atmosphere created at Sutter since the disciplines and termination of nurses engaged in what are supposed to be protected activities, the Court in *Burnup & Sims* explained the rationale for this rule as follows:

> The rule seems to us to be in conformity with the policy behind s 8(a)(1). Otherwise the protected activity would lose some of its immunity, since the example of employees who are discharged on false charges would or might have a deterrent effect on other employees. Union activity often engenders strong emotions and gives rise to active rumors. A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith. It is the tendency of those discharges to weaken or destroy the s 8(a)(1) right that is controlling.

Burnup & Sims, 379 U.S. 21, 23. As demonstrated in the affidavits provided by the Union,

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[1] The sworn declaration of (b) (6), (b) (7)(C) is attached hereto as Exhibit 1. (b) (6), (b) (7)(C) declaration was not procured during the initial investigation because the Region insisted that it did not need any additional evidence to support the charges during the investigatory stage.

[2] It is worth noting that even if the Employer were to claim that it was unaware that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) were engaged in PCA, such lack of knowledge would not affect the *Burnup & Sims* analysis. See, e.g., *NLRB v. Ideal Dyeing & Finishing Co.*, 956 F.2d 1167 (9th Cir. 1992) (holding that Employer was liable for discharging employee during the course of PCA even if the Employer was unaware that employee was engaged in PCA at the time).

particularly from (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) there has already been such a deterrent effect on other employees. This is doubly so since the Region improperly dismissed the charges related to disciplines and termination for engaging in Section 7 activity.

The appropriate *Burnup & Sims* analysis makes clear that an Employer's investigation and findings, even if "thorough," "unbiased," and in good faith, in no way shields the Employer from a finding of a violation of the Act. "[T]he employer's good faith is simply not relevant if the misconduct did not occur." *Shamrock Foods Co. v. NLRB*, 346 F.3d 1130 (2003). Further, "*Burnup* requires no showing of the employer's anti-union hostility for the commission of an unfair labor practice." *Webco Indus., Inc. v. N.L.R.B.*, 217 F.3d 1306, 1313 (10th Cir. 2000). The Region, in express communication with the Union regarding its reasoning for partial dismissal, made clear that the focus of the decision was not on the Region's own investigation into the underlying facts regarding the alleged misconduct, but rather on its analysis of the Employer's investigation, concluding that the because the Employer's investigation appeared to be "thorough" and "unbiased," the Employer could not be found to be in violation of the Act. This disturbing analysis completely subverts the long-standing and applicable standards set forth in *Burnup & Sims* and its related progeny. The Region's analysis as explained to the Union when soliciting withdrawals of the allegations now on appeal, in essence erroneously morphs *Burnup & Sims* with *Wright Line*. Accepting for a moment the Region's conclusion that the Employer's investigation was thorough and unbiased, which as described in greater detail in Section IV below is wholly unsupported, the Region should still have then conducted its own independent investigation, taking voluntary affidavits and subpoenaing affidavit testimony where necessary, and examining the evidence produced to make a determination regarding whether the alleged misconduct did in fact occur. To the extent the Region may have done so and made credibility determinations that the misconduct did in fact occur, it erred, and the Regional Director should have issued complaint, leaving it to an administrative law judge to resolve credibility disputes.

Even if the Region were convinced through its own independent investigation, separate and apart from the Employer's allegedly "good faith" investigation, that some misconduct did occur on the part of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) in applying the appropriate *Burnup & Sims* analysis, the Region should then have assessed whether that misconduct was so serious as to lose protection of the Act. Before an administrative law judge, General Counsel would be tasked with showing that *either* the misconduct did not occur *or* that it was not serious enough to forfeit the protection of the Act and to warrant the discipline imposed. *Consolidated Communications, Inc. v. NLRB*, 837 F.3d 1, 8 (D.C. Cir. 2016) (emphasis added). In assessing whether such alleged misconduct might be serious enough to lose protection of the Act, the analysis should then, and only then, turn to the four-factor test laid out in *Atlantic Steel Co.*, 245 NLRB 814 (1979). *See King Soopers, Inc. v. NLRB*, 859 F.3d 23 (D.C. Cir. 2017) (holding that the NLRB properly applied the *Atlantic Steel* factors in determining level of misconduct within the appropriate framework of *Burnup & Sims*).

In determining whether misconduct occurred, and if so, whether that misconduct was serious enough to forfeit the protection of the Act and to warrant the discipline imposed, the Region is obliged to rely on its own investigations, including affidavits, statements, and other

evidence therein. The Region expressly acknowledged to the Union that its investigation did not disclose any objective evidence to refute the sworn testimony of those nurses directly involved in the alleged "incident" who consistently stated that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) in no way acted inappropriately. Rather, the Region expressed that the evidence produced created a "he said, she said" scenario, where the consistent testimony of the nurses directly involved, including (b) (6), (b) (7)(C) who was part of the conversation but was not disciplined, was contradicted by the reports in the Employer's investigation and potentially by affidavit testimony of other Employer-provided witnesses. As explained below, in such a scenario with a clash of testimonies and the case therefore turning primarily on credibility resolutions, such resolutions must necessarily be resolved by a trier of fact, not in the preliminary Board investigatory process. *See, e.g.*, *Shamrock Foods Co.*, 346 F.3d at 1133.

II. Absent Objective Evidence, All Credibility Determinations Should Be Made by the Trier of Fact

It is well established that credibility determinations are reserved for the trier of fact. The ULP Casehandling Manual, Section 10064 and GC Memorandum 09-06 assert that Regional Offices are only to resolve conflicting factual accounts of witness testimony when objective compelling documentary evidence exists to support such a finding:

> Regional Offices are expected to resolve factual conflicts only on the basis of compelling documentary evidence and/or an objective analysis of the inherent probabilities in light of the totality of the relevant evidence… If, after applying the principles set forth above, the Regional Office is unable to resolve credibility conflicts *on the basis of objective evidence* regarding matters which would affect the Regional Office's merit determination, a complaint should issue, absent settlement.

NRLB Casehandling Manual Part 1: Unfair Labor Practice Proceedings, Section 10064 (emphasis added).

In the handling of the investigation and making its merit determinations, the Region stopped short of following the guidance of the Casehandling Manual and the General Counsel Memo in several important regards. First and foremost, according to both Field Examiner and Field Examiner Supervisor handling the investigation, the Region decided to give more weight to the testimony of witnesses proffered by the Employer by deeming them "neutral." In their explanation, they insisted that those witnesses not directly involved in the conversation in question were somehow more "neutral" than those who were involved in the conversation. The labeling of some witnesses as more "neutral" than others is in-and-of itself a credibility determination inappropriately assigned by the Region in this investigatory stage. Further, even following that flawed logic, the Region ignored the fact that there were additional witnesses who were not directly involved in the conversation and who could have provided affidavits. The Region improperly concluded that those additional witnesses need not be pursued because it had already incorrectly determined that the Employer's investigation alone was unbiased and thorough and therefore no violation could have occurred. Through this reasoning the Region concluded that irrespective of the PCA and union activity that the Employer would have taken the same actions, mistakenly morphing its analysis with *Wright Line*.

(b) (6), (b) (7)(C) a RN witness to the "incident," was mentioned in numerous affidavits and was interviewed by Sutter HR by phone (though (b) (6), (b was never presented with a statement to review). Faced with an admitted "[redacted] said, [redacted] said" scenario, the Region did not think it necessary to take an affidavit from (b) (6), (b) (7)(C) Despite repeated queries by CNA, the Region assured the Union that it did not need any more evidence. Because the Agenda was imminent and the schedules of (b) (6), (b) (7)(C) and the investigating Board Agent conflicted, CNA provided the Region with an unsolicited declaration, in which (b) (6), (b) (7)(C) states that (b) (6), (b did not witness any threats, physical violence or hostile behavior. The Region, however, made yet another improper credibility determination of (b) (6), (b) (7)(C) provided testimony. The Region deemed (b) (6), (b) (7)(C) to be a "non-neutral" witness because (b) (6), (b at one point engaged in the conversation with (b) (6), (b) (7)(C) even though (b) (6), (b stepped away from the conversation and was standing nearby when the alleged misconduct occurred, and because (b) (6), (b is "(b) (6), (b) (7)(C)" with (b) (6), (b) (7)(C) Firstly, as mentioned above, this type of credibility determination by field investigators at this stage in the NLRB process is wholly inappropriate and flies in the face of long-established procedural guidelines, board decisions, and case law. "[A]dministratively resolving credibility conflicts [should] only [take place] where documentary or other objective evidence is the basis for doing so. If such evidence is not available, the issue of credibility is best resolved through a formal hearing where the testimony of witnesses is subject to crossexamination." GC Memorandum (March 5, 1976). Secondly, if anything, the Region should have afforded (b) (6), (b) (7)(C) testimony the most weight, given (b) (6), (b vulnerable position as a current employee testifying adversely to (b) (6), (b employer. *See, e.g., Formed Tubes, Alabama*, 211 NLRB 509, 511 (1974) (holding that the testimony of those employees who were in the vulnerable position as current employees testifying adversely to their employer was entitled to added support).

RN (b) (6), (b) (7)(C) is another witness to the conversation in question from whom the Region did not pursue testimony, even though (b) (6), (b) (7)(C) meets the Region's arbitrary standard of a "neutral" witness. (b) (6), (b) (7)(C) was not directly involved in the conversation between (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(However, (b) (6), (b did walk down the hallway passing them in conversation. In fact, (b) (6), (b was walking with RN (b) (6), (b) (7)(C) an RN who was directly interviewed by the Employer in the course of their investigation. As discussed in greater detail below, the Employer did not bother to interview (b) (6), (b) (7)(C) until well after the decision was made to terminate (b) (6), (b) (7)(C) and seriously discipline (b) (6), (b) (7)(C) and (b) (6), (b) (7)(Perhaps more disturbingly, however, is that the Region did not deem it necessary to speak with (b) (6), (b) (7)(C) as part of their investigation, either. The Region never asked the Union for (b) (6), (b contact information, to help facilitate a voluntary affidavit, nor did the Region seek to subpoena (b) (6), (b) (7)(C) for (b) (6), (b testimony. The Union continued to pursue all potential relevant evidence despite the Region's assertion that no further evidence was required for determinations on the allegations. After the Region's partial dismissal, the Union was able to secure a sworn declaration from (b) (6), (b) (7)(C) attached hereto as Exhibit 1. (b) (6), (b) (7)(C) like nearly every other witness to the "incident," confirmed that (b) (6), (b did not witness any aggressive or worrisome behavior on the part of (b) (6), (b) (7)(C) (b) (6), (b) (7)(or (b) (6), (b) (7)(C) (b) (6), (b did not hear (b) (6), (b) (7)(C) (b) (6), (b) (7)(or (b) (6), (b) (7)(C) raise their voices, (b) (6), (b did not see them in any way restrain (b) (6), (b) (7)(C) from exiting the conversation, and (b) (6), (b did not witness any kind of behavior that could be considered aggressive or cause for concern.

Additionally, [redacted] was with [redacted] both before and after the incident, and [redacted] did not express concern about any unprofessional behavior on the part of [redacted] or [redacted]

The sheer fact that the Region decided that any witnesses were somehow more neutral than others is itself a credibility determination reserved for the trier of fact. There is no objective evidence present in this case, such as video surveillance footage, that would permit the Region to resolve a credibility conflict in the case of conflicting testimony, whether through affidavit or in the Employer's own internal investigation. Nevertheless, the Region did just that. Furthermore, contrary to the GC Memo 09-06, the Region does not appear to have weighted the severity of both the allegations and the severity of the consequences in deeming a resolution to the credibility conflict by an ALJ unnecessary. Here the Employer alleged something quite serious, i.e. workplace violence on the part of an RN against [redacted]. Such an allegation could endanger an RN's licensure and hence [redacted] livelihood. This fact should weigh in favor of issuance of complaint. However, the Region implicitly concluded that the investigation of a union-busting, ULP-committing hospital was thorough and unbiased, and the subordinate witness RNs who provided testimony favorable to Sutter were uncoerced. Despite the fact that such a good faith investigation determination is irrelevant in a *Burnup & Sims* analysis, the Region misapplied the standard of the case it did apply.

Under an *Atlantic Steel* analysis, which the Region did undertake, the standard does not make room for a "good faith" determination about an employer's investigation, but rather rests on an objective analysis of the facts of the alleged incident. Or as phrased in GC Memo 09-06, "an objective analysis of the inherent probabilities in light of the totality of the relevant evidence." Upon examination, the inherent probabilities in light of the totality of the relevant evidence should point decidedly towards the credibility of the RNs involved, sufficient for resolution by an ALJ to reach upon issuance of complaint.

A review of the totality of the relevant evidence shows this to be so: the incident took place between 3 RNs with a total of 60 years of combined experience at Sutter, each with spotless records and glowing evaluations from Sutter. All 3 RNs had been engaged in PCA with the highest levels of hospital management only minutes before. They were at the time of the incident engaged in PCA concerning the same long-standing and important working-condition issue that had largely been the impetus behind the organizing campaign, i.e. nurse-to-patient ratios and the Employer's continual violation of the law in that regard. The RNs, again only minutes earlier, had been instructed by the [redacted] of the hospital to discuss with their supervisors the issues, including ratios, they had raised in the town hall. [redacted] was told by numerous other nurses that Sutter was aware of [redacted] organizing efforts on behalf of the Union. Sutter management spoke directly with [redacted] colleagues, such as RN [redacted] about Sutter's knowledge of [redacted] Union involvement and attempted to dissuade nurses from following [redacted] unionization efforts by lying about [redacted] role in the Union. [redacted] department, the [redacted], was one of the strongest areas of support for the Union in the hospital. Sutter denied its knowledge of [redacted] Union involvement, which was a proven lie.

Reviewing the evidence and the totality of the circumstances, which scenario would an

objective analysis project in probabilistic terms? That a (b) (6), (b) (7)(C) RN leader with numerous character witnesses lined up behind [redacted] advocating for issues of concern to all nurses in the [redacted] and indiscreetly organizing for union representation would assault and threaten a (b) (6), (b) (7)(C) in public thereby endangering [redacted] career and the campaign? Or that a hospital chain, which has fought tooth-and-nail every organizing campaign CNA has engaged in at its hospitals would do whatever it takes to prevent its flagship campus from unionizing, up to and including taking advantage of a situation where an [redacted] became unreasonably emotional during a conversation to terminate a known nurse leader to chill the campaign, knowing from experience that even if a ULP complaint were to issue, the only consequence would be reinstatement. An objective analysis of the totality of evidence and circumstances should lead to the issuance of complaint to allow a trier of fact to make credibility determinations based on witness testimony and demeanor under oath and with the opportunity for cross examination.

The Union cannot stress strongly enough that by all appearances, the Region has made a two-fold credibility determination in the absence of any objective, non-circumstantial evidence. First it determined the Employer's witnesses were more "neutral" than the Charging Parties' witnesses. Second, it then determined that those witnesses' testimonies and the Employer-conducted investigation was more credible than 4 RNs with approximately 70 years of combined experience at Sutter, all with spotless disciplinary records and stellar evaluations. As CNA emphasized in its June 6 position statement for 10(j) injunctive relief, this is a classic nip-in-the-bud termination of a union activist leader, and discipline of other supporters, during the groundswell of an organizing campaign[3]. Coupled with the fact that the nurses were engaged at the time of the incident in hallmark PCA, it is clear that the Region should have put this before an ALJ rather than dismiss these very serious charges in deference to an in-house employer investigation.

The standard of the Board in this regard clearly weighs in favor of such credibility resolutions being made by the trier of fact:

> The Board in *Union Carbide Building Co.*, 276 NLRB 1410 (1985), quoted approvingly the language of Administrative Law Judge Joan Weider, in regarding a possible standard for measuring the General Counsel's obligations in this respect. The judge found that the credibility issues "were not of such patent clarity as to be readily susceptible of resolution without resort to the crucible like testing of an evidentiary hearing. None of the key witnesses was shown to be patently or obviously incredible prior to the issuance of

[3] It is worth noting that despite the Union's repeated emphasis of the severity of these disciplines and termination and the devastating impact on the organizing campaign, [redacted] related to the Union that in the Field Examiner's call to [redacted] regarding dismissal of [redacted] charge, [redacted] implored the Field Examiner to reconsider given the ruinous impact this decision would have on the organizing campaign. The Field Examiner casually responded that [redacted] could always appeal if [redacted] disagreed with the decision. When [redacted] pushed back that the tremendous chill created by these unlawful acts coupled with this unjust dismissal could kill the organizing campaign altogether before a decision on appeal might ever come through, the Field Examiner responded, "Huh, I hadn't thought of that." This callous disregard for the seriousness of the charges and the intensified chill on the organizing campaign again reveals the inadequacies of the Region's investigation and the error of the decision to partially dismiss these allegations.

> complaint." Id. at 1412. The Board, as noted, quoted Judge Weider's language in affirming her decision that the General Counsel's position was substantially justified.

Supershade Corp. 280 NLRB 1213, 1214 (1986).

Here it is appropriate as suggested by *Union Carbide*, to analyze whether the credibility issues presented herein were "of such patent clarity" as to be readily susceptible of resolution without a hearing. The Region should clearly have found that they were not. As such, the Region should have issued complaint so that credibility determinations could have properly been made based on testimonial evidence of live witnesses before an administrative law judge who would have the opportunity to observe their demeanor and thus properly make appropriate credibility resolutions. *See Webco Indus., Inc. v. NLRB*, 217 F.3d 1306, 1315 (10th Cir. 2000) (citing *Eastern Eng'g & Elevator Co. v. NLRB,* 637 F.2d 191, 197 (3d Cir.1980)).

III. Under *Atlantic Steel* Analysis, the Action of RNs were Not So Opprobrious as to Lose Protection Under the Act

As explained above, it is undisputed that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were engaged in PCA in their discussion with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) that led to their discipline. That communication was wholly about improving communication with management and addressing key workplace issues, including nurse-to-patient ratios that have been a key underpinning of the (b) (6), (b) (7)(C) nurses' concerns with working conditions. Even if the Region concluded that it could not establish that no misconduct took place, it should then ask whether the misconduct was so egregious as to forfeit the protection of the Act under the four-factor test set forth in *Atlantic Steel*.

Indeed, Sutter surely argued that, although engaged in obvious PCA, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) lost protection under the Act by their allegedly pejorative conduct. As General Counsel is well aware, in *Atlantic Steel*, the Board established a four-factor test to determine whether employee misconduct that occurs during the course of otherwise protected activity is so opprobrious as to lose protection under the Act. 245 NLRB 814, 816 (1979). The four factors are: 1) the place of the discussion; 2) the subject matter of the discussion; 3) the nature of the employees' outburst; and 4) whether the outburst was provoked by the employer's unfair labor practice. *Ibid. Atlantic Steel* also contemplates the employee's past record. *Id.* at 817.

In the instant case, the conduct of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) cannot be construed, even under the most negative interpretation of their actions, as so opprobrious as to lose protection under the Act. To the first factor, where remarks are made in a work area in front of other employees, such facts would weigh against finding that the statements and/or conduct were protected by the Act. *See, e.g., Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 32 (D.C. Cir. 2011). In the instant case, the nurses were in a hospital hallway during the conversation in question. The hallway was not a patient care area of the hospital where typical RN work takes place. While the hallway was accessible to other employees at the time, according to all affidavit and declaration testimony, there were only three other hospital employees apart from those directly engaged in the conversation who were in the hallway long enough to witness the

conversation and potentially be affected ([redacted] RN [redacted] and RN [redacted][4]. The Employer cannot demonstrate that there was a disruption in work, as most if not all of the nurses involved or witnessing were off-duty (namely, [redacted], and [redacted]). At one point during the conversation, three on-duty employees pushing an isolette carriage passed by, but were undisrupted by the nurses' conversation with [redacted] further evidencing the lack of impact on work conditions. Additionally, the conversation took place directly following the Employer-called town hall meeting and [redacted] and [redacted] were following express direction from the hospital [redacted] to discuss working conditions with their supervisor following the town hall. Rather than demonstrate that the Employer had lost the ability to control its workforce, the RNs were doing as instructed by the highest levels of hospital management. Finally, any potential de minimis disruption the conversation did have was short-lived, lasting only minutes. The brevity of the conversation and any alleged disruption weighs in favor of protection under the Act. *See, e.g., Caterpillar Logistics, Inc. v. Nat'l Labor Relations Bd.*, 835 F.3d 536, 547 (6th Cir. 2016) (upholding ALJ application of *Atlantic Steel* analysis where ALJ found the fact that employee disrupted work for a very brief period of time weighed in favor of finding protection under the Act in the first factor of the *Atlantic Steel* test.)

To the second factor, the subject matter of the discussion was entirely related to concerted attempts to improve working conditions, namely communication with management and nurse-to-patient ratios and nurse-to-supervisor communications. Again, this is not an issue in contention and this factor weighs heavily in favor of finding that the statements and/or conduct of the nurses should be protected by the Act.

To the third and fourth factor, here, according to five witnesses ([redacted] and [redacted] there was no outburst from [redacted] or [redacted] The only outburst, in fact, came directly from [redacted] who ultimately became emotional, yelled at the nurses, and stormed away. The Employer's termination and discipline notices assert that [redacted] and [redacted] were acting aggressively and that [redacted] physically touched [redacted] body. However, nearly every witness beside [redacted] has stated that there was no aggressive behavior or statements from [redacted] or [redacted] and the Employer has no surveillance footage from the date and place in question that could objectively resolve the clash of testimonies.

Assuming that, at worst, [redacted] and/or [redacted] made some intimidating or aggressive statements, which they did not, such statements, in light of the surrounding circumstances, would still not cause [redacted] or [redacted] to lose protection under the Act. *See, i.e., In Re Kiewit Power*, 652 F.3d 22 (2011) (D.C. Circuit upholding NLRB decision finding that employees angry statements, "it was going to get ugly" and that their manager "better bring [his] boxing gloves," were not cause for the employees to lose the Act's protection). There has been no testimony to suggest that [redacted], or [redacted] made any threatening statements, as the entirety of their conversation was based in resolving workplace

[4] To the extent the Employer claims any other employees witnessed an allegedly disruptive conversation between [redacted] and [redacted] such a claim would be in direct contradiction to the sworn affidavits and declarations of every other witness involved, and as such any such claim would necessarily require credibility determinations made by a trier of fact.

issues. Furthermore, those comments the nurses' did make to [redacted] while not provoked by a ULP, were in direct response to their shared frustration over unsatisfactory working conditions. *See Metro-W. Ambulance Serve., Inc. & Teamsters Joint Council #37, Int'l Bhd. Of Teamsters and Teamsters Local #223, Int'l Bhd. Of Teamsters*, 360 NLRB 1029, 1049 (2015) (finding that fourth factor of *Atlantic Steel* analysis weighed in favor of finding protection of the Act where employee's remarks were not provoked by an unfair labor practice, but were provoked by employee's frustration, shared by others, over a term or condition of employment). It is clear that under the *Atlantic Steel* test, [redacted] and [redacted] retain their protection under the Act.

Because no threatening statements were made, the Employer resorted to claiming that [redacted] and [redacted] were standing aggressively close to [redacted] in a way that restrained [redacted] from exiting the conversation and that [redacted] stomach was touching [redacted] Under the analysis set forth in *LaGuardia,* the Board held that three employees who *deliberately* and excessively touched their supervisor with an *effort to restrain him* as a means of presenting him with an employee-signed petition forfeited protection under the Act. *Laguardia Assoc., LLP*, 357 NLRB at 1101 (emphasis added). There, one employee deliberately grabbed the supervisor's shoulder to prevent him from leaving and reached around his waist with the petition; another employee pushed her chest against the supervisor and moved from side to side, deliberately blocking his exit; a third employee deliberately grabbed the supervisor's arm to restrain him from fleeing. *Id.* at 1098. The Board held that such deliberate physical contact "reasonably threatened [the supervisor] and the Respondent's ability to maintain workplace order and discipline." *Id.* at 1101. However, a fourth employee did not forfeit PCA for touching a security guard's wrist as the guard waved his arms to clear a path for the supervisor. *Ibid.* Because the fourth employee did not deliberately touch the security guard with any direct intention to restrain him, her conduct was materially different from the other three employees, and therefore her conduct was protected under the Act. *Ibid.* Therefore the Employer violated 8(a)(1) in bringing discipline against her. *Ibid.*

The Region apparently determined that [redacted] made some physical contact with [redacted] and that [redacted] and [redacted] though never physically touching [redacted] were standing so close so as to block [redacted] from exiting the conversation. This determination in and of itself is problematic, as such a determination, as stated prior, should require a credibility determination before a trier of fact given the clashes in testimony around this issue. This error is compounded by the fact that the Region has uncovered no evidence in its investigation that would support the accusation that [redacted] or [redacted] *deliberately* threatened or made contact with [redacted] so as to lost protection of the Act as set forth in *Laguardia*. Witnesses outside the conversation would have no way of knowing what [redacted], [redacted], or [redacted] intentions were with their actions. Further, the direct affidavit testimony of [redacted] and [redacted] makes abundantly clear that they in no way intended to intimidate [redacted] or block [redacted] from exiting the conversation. Indeed, [redacted] did ultimately walk away from the conversation. Additionally, text messages sent by [redacted] to [redacted] immediately after [redacted] exited the conversation reveal [redacted] contemporaneous state of mind, which is to say that far from intending to threaten or touch [redacted] [redacted] actually felt terrible that [redacted] may have misinterpreted what [redacted] was saying or in any way made [redacted] feel upset. **These text messages**

constituting new evidence are submitted hereto as Exhibit 2. On the basis of all available evidence, neither [redacted] nor [redacted] made any deliberate threats or physical contact with [redacted] and therefore under the standards set forth for physical contact under *Laguardia*, even if the nurses did make some physical contact with [redacted] which they did not, they still should not have lost protection under the Act.

In the present case, under no plausible interpretation could the conduct of RNs [redacted] or [redacted] be reasonably seen as threatening [redacted] and/or Sutter's ability to maintain workplace order and discipline. [redacted] **did not** deliberately touch [redacted] with an effort to restrain [redacted] *Even if* [redacted] incidentally contacted [redacted] during their discussion, for example because they were squeezed up against the wall by a passing isolette pushed by 3 people, such conduct is not sufficient to forfeit protection of the Act. *Laguardia*, 357 NLRB at 1101. Sutter nonetheless speciously claims that [redacted] aggressively touched [redacted] in an intimidating and threatening manner and that [redacted] physically surrounded [redacted] and blocked [redacted] from walking away. However, this claim is not supported by any facts, even as laid out by the Employer, as [redacted] did freely walk away from the conversation when [redacted] became emotionally agitated in response to the nurses' communications about unsatisfactory working conditions, including ineffective management communication. With regard to these facts, Sutter could not have presented evidence as a result of its sham investigation demonstrating that [redacted] alleged actions were deliberate. Nor could Sutter have shown that [redacted] or [redacted] made a deliberate effort to physically restrain [redacted] The witnesses who maintain that the nurses were not verbally or physically aggressive toward [redacted] clearly outnumber those put forth by Sutter claiming otherwise[5]. Further, Sutter fails to demonstrate the "particularized proof that specific individuals engaged in the misconduct at issue." *Id.* at 1100.

Finally, even if there was sufficient evidence to demonstrate that some severe misconduct did occur that was so great as to lost protection under the Act, which there is not, even the grossest interpretation of actions would not warrant the level of discipline assigned. Again, to maintain protection under the Act, the evidence need only demonstrate that *either* the misconduct did not occur *or* that it was not serious enough to forfeit the protection of the Act *and to warrant the discipline imposed. Consolidated Communications*, 837 F.3d 1, 8 (D.C. Cir. 2016) (emphasis added). RN [redacted] an employee of Sutter since [redacted], in a sworn declaration provided on July 7, 2017 and attached here as **Exhibit 3**, echoed the sentiments of nurses throughout the hospital shocked by the unprecedented level of discipline inflicted on [redacted] and [redacted] The only past incident of alleged workplace violence that [redacted] could recall took place between two [redacted]. In that incident, there was physical contact in a

[5] The Union bases this calculation on available affiant and declarant testimony and from communications with the Region regarding the charge. However it is worth noting that even if the Employer did provide more supposed witnesses alleging that serious misconduct occurred, a greater number of witnesses on one side of an issue is but one, non-controlling factor in assessing a case. *See, e.g., Abbott Labs v. NLRB*, 540 F.2d 662, 667 (4th Cir. 1976)(credibility not determined by a mere "head count"); accord: NLRB v. Union Carbide Caribe, Inc. 423 F.2d 231, 233 (1st Cir. 1970); *George C. Foss Co.*, 270 NLRB 232, 237 (1984) (credibility not determined by the number of witnesses but rather by their trustworthiness); *Salt River Valley Water Users' Ass'n*, 262 NLRB 970, 974 fn. 10 (1982)(credibility determinations are not based on numbers, but rather upon demeanor and logic of probability).

public hallway of the hospital to the level of [redacted] punching the [redacted] and making threats about future physical harm. Upon learning of this incident, HR did not immediately place both employees on administrative leave to conduct an investigation. Nor did HR terminate or place either of the employees on a last chance agreement. Rather, HR's initial response was to do nothing. Only when prompted by other concerned employees did HR begrudgingly suspend each employee for a couple of days (one such suspension took place while the employee was already on vacation). Both [redacted] involved in the physical altercation remain employed at Sutter to date. HR followed this same casual approach to workplace violence just one year ago when a Sutter RN complained of sexual harassment from another coworker. Sutter did not place the harasser on leave pending an investigation, nor did Sutter terminate or even suspend the harasser. Instead, HR had a meeting with the employee accused of sexual harassment, with [redacted] sitting in as witness. In the meeting, HR instructed the harasser to cease engaging inappropriately with the RN. However, when the harasser continued [redacted] misconduct after the meeting, HR refused to take any further action. These responses to other incidents and types of workplace violence make apparent that even if [redacted] and [redacted] engaged in misconduct as the Employer has claimed, their actions would still not warrant the level of discipline received.

It is clear that Sutter seized on [redacted] emotional state to take unprecedented action by disciplining and terminating known Union leaders and outspoken advocates for the improvement of [redacted] RN working conditions, striking its most ferocious blow in an ongoing busting campaign of lies, threats, and intimidation. It bears stressing that even if [redacted] bizarrely felt threatened by this "incident," even assuming there was any inadvertent physical contact, [redacted] own subjective emotional response is not the standard laid out by the Board in *Atlantic Steel*. *See Lana Blackwell Trucking, LLC*, 342 NLRB 1059, 1062 (2004) (Remarks did not lose protection even though the manager subjectively believed that the employee was rude, disrespectful and embarrassed her in front of other employees); *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB No. 12, slip op. at 5 (2014) (employee's Section 7 activity does not lose protection merely because it makes fellow employee uncomfortable) (citing *Frazier Industrial Co.*, 328 NLRB 717, 719 (1999), enfd. 213 F.3d 750 (D.C. Cir. 2000)); *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000) ("[l]egitimate managerial concerns to prevent harassment do not justify discipline on the basis of the subjective reactions of others to [employees'] protected activity"). Objectively, with all the facts considered, there is no way that a reasonable person would have felt threatened by the conduct of [redacted] or [redacted] *See Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 29 fn. 2 (D.C. Cir. 2011), enfg. 355 NLRB 708 (2010).

Accordingly, after the Region did not apply *Burnup & Sims* and mistakenly concluded that misconduct had taken place based largely on the Employer's own investigation, it misapplied the *Atlantic Steel* doctrine, in reasoning in light of all the objective evidence that [redacted] and [redacted] conduct was so opprobrious as to lose the protection of the Act. Rather, the Region should have found that it had sufficient evidence to find that the Employer violated the Act by disciplining the nurses for the very protected concerted activity in which [redacted] and [redacted] were immediately engaged.

IV. Even If Reliance on the Employer's Investigation Could Be Determinative of the Region's Merit Findings, the Evidence Demonstrates that the Employer's Investigation Was Flawed

As emphasized above, the good faith process or findings of Sutter's investigation is irrelevant to whether a ULP was committed. The only bearing it has is whether the burden shifts back to the General Counsel under the *Burnup & Sims* analysis. Even so, since the Region improperly put such emphasis on the nature of the Employer's investigation, it bears addressing. Firstly, the Employer's investigation was not an unaltered collection of witness statements regarding the event. (b) (6), (b) (7)(C) a former (b) (6), (b) (7)(C) familiar with the HR process of investigation of misconduct, stated that when Sutter HR interviews employees as part of an investigation, the employee is not entitled to write a statement in their own words. Instead, HR records witness accounts according to HR's own impression and interpretation of what a witness says. This was confirmed by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who when cursorily interviewed by HR as part of Sutter's "investigation," were never provided a statement to sign reflecting their actual recollection of events or afforded the opportunity to review the notes taken by HR regarding their respective accouts. (b) (6), (b) (7)(C) also did not recollect signing any statement after (b) (6), (b was interviewed by Sutter's attorney. As such, all of the accounts in Sutter's supposedly unbiased investigation did not come directly from witnesses but instead were third-hand accounts from Sutter itself.

Another central flaw with the Region's contention that it found the Employer conducted a good faith investigation is that it relies on hearsay evidence to reach this conclusion. Based on all the affidavit and declarant testimony to which the Union has access, there were a total of eleven potential witnesses to this incident, including (b) (6), (b) (7)(C) and the RNs who were disciplined. Three potential witnesses were passers-by pushing an isolette, and neither Sutter nor the Region spoke with them. Two others, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) both provided declarations because the Region failed to contact non-Sutter provided, third-party witness. (b) (6), (b) (7)(C) provided a phone statement to the Employer, and was asked whether (b) (6), (b saw any hostile behavior on the part of (b) (6), (b) (7)(C) When (b) (6), (b said (b) (6), (b did not, the Employer never followed up with (b) (6), (b to provide a statement. (b) (6), (b) (7)(C) who also did not witness any of the behavior alleged by Sutter, was not contacted until after (b) (6), (b) (7)(C) was terminated and (b) (6), (b) (7)(C) and (b) (6), (b) (7) were disciplined, as mentioned above and described in greater detail below. This leaves only RNs (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) CNA assumes that the Region took affidavits from these RNs, and that these affidavits form the basis of the Region's conclusion that the Employer's investigation was fair and thorough, though it was far from it. To the extent Sutter relied on any other person's testimony to reach its pre-determined conclusions, any such individuals would inherently be limited to providing hearsay evidence relating what their impressions were either before or after the alleged misconduct occurred, as they would not be percipient witnesses to the "incident."

The Region egregiously decided that in an environment where (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) had already spoken out several times against CNA and unionization, that likely anti-union nurses put forward by the Employer were somehow neutral observers and therefore to be credited over the testimony of four RNs who stated that no misconduct took place (and since the Region's

dismissal, a fifth witness, [redacted] has come forward again corroborating that no misconduct took place). Based on conversations with the Region, it appears that the affidavits of [redacted] and [redacted] merely corroborated the investigation that the Employer provided. [redacted] has since admitted to a coworker that HR asked [redacted] the same questions over and over in their interview with [redacted] further confessed, as recently as July 12, 2017, to another coworker that [redacted] feels terrible about [redacted] termination and that [redacted] never saw [redacted] touching [redacted] Understandably, especially after the Region made the egregious error to dismiss these charges thereby supporting [redacted] termination, [redacted] coworkers have been unable to convince [redacted] to provide a statement stating as such, given the risk of unremedied retaliation, up to and including termination. The nurses with whom [redacted] has spoken are equally fearful of providing statements for fear of becoming "the next [redacted]" This makes at least three individuals who have refused to participate in the investigation or pulled out at the last minute out of fear of reprisal. Sutter's retaliation against [redacted] and [redacted] is already having its intended chilling effect, not only with regard to the organizing campaign, but participation in NLRB processes.

It strains credulity that the Employer simultaneously conducted a thorough and unbiased investigation while at the same time violating employees' Section 7 rights by preventing them from discussing the investigation and harassing them when found to have been so doing. The Region found merit to these allegations in its investigation, underscoring the Region's acknowledgement of the Employer's proclivity for unlawful conduct. The simultaneous commission of acknowledged ULPs undermines the Employer's credibility and should have been a factor in determining the Employer's undeniable bias in crafting its own internal investigation.

Though Sutter unsurprisingly claims that it did not set out to terminate [redacted] the Region has no reason to rely on the Employer's word. As mentioned, Sutter maintained that it had no knowledge of [redacted] union activity. However, the declaration of [redacted] completely refutes this outright lie, whereby [redacted] the [redacted], confirmed Sutter's knowledge of [redacted] union activities back in January of this year. During the course of that conversation, [redacted] interrogated [redacted] regarding soliciting on behalf of the Union, and when [redacted] volunteered that [redacted] was supporting the unionization efforts, [redacted] stated that Sutter was already aware of that fact, and then promulgated the fabrication that [redacted] is being paid for [redacted] efforts in support of the Union. If the Employer did not set out to retaliate against [redacted] for engaging in protected activity, why did it lie to the Region about its knowledge of such activity?

The assertion that Sutter's investigation was "thorough" is equally unsupported. Sutter did not interview all witnesses to the alleged incident and, as mentioned above, did not take statements from those witnesses it did interview. In fact, only after the Union filed its own charges against the Employer (subsequent to the individual nurses' charges and after [redacted] had already been terminated) did the Employer bother to interview known witness [redacted] in an obvious attempt to cover its bases and shore up its pre-determined stance. Were the Employer truly interested in conducting a thorough investigation, [redacted] would have been interviewed at the same time as the rest of the witnesses, especially because Sutter was well aware of [redacted]

presence given that [redacted] walked through the hallway with [redacted] a witness Sutter apparently did interview. Instead, the Employer flagrantly ignored [redacted] until it faced increased scrutiny from the Union and the Region. And even then, Sutter's interview of [redacted] demonstrates its culpable actions. In stark contrast to the rest of the nurses interviewed by Sutter HR, [redacted] was asked to meet in-person with a Sutter attorney. Under these intimidating circumstances, Sutter no doubt hoped that [redacted] would feel compelled to state what [redacted] knew the Employer wanted to hear, but courageously [redacted] confirmed what Sutter already knew: that [redacted] never touched [redacted] and that [redacted] [redacted] and [redacted] were in no way acting in a threatening, restraining, or intimidating manner. If Sutter actually had any intention of taking such contradictory testimony seriously, it might have then decided to re-assess the disciplines and terminations and/or re-open its investigation to attempt to get a better sense of what actually happened during the conversation in question. Not surprisingly, however, Sutter made no changes to its course of action.

A failure to conduct a fair and complete investigation "leads to the conclusion that [the employer] was not genuinely interested in knowing the underlying facts and circumstances of the events but, rather, was looking for a pretext to discharge [the employee]." *Amcast Automotive of Indiana, Inc. and John Rowe*, 348 NLRB 836, 850 (2006). Indeed, the nature of the Employer's investigation here certainly shows that Sutter was never really interested in knowing the underlying facts and circumstances of events, but was rather more interested in attempting to cover their own liability for patently unlawful disciplines and termination of a Union nurse leader. As such, even the Region's improper reliance on the Employer's supposed good faith ("thorough" and "unbiased") investigation is unsupported.

V. The Region Could Have Exercised Its Investigative Subpoena Authority

As the Union has repeatedly emphasized throughout its Appeal and Motion for Reconsideration, the Region should have left any credibility resolutions "not of such patent clarity as to be readily susceptible of resolution without resort to the crucible like testing of an evidentiary hearing" to an ALJ. *Union Carbide*, 276 NLRB 1410 (1985). Here, the Region cannot claim that any of the key witnesses were shown to be patently or obviously incredible and the Region had more than enough testimony and evidence supporting the charges to issue complaint. However, in the event that Region felt it had insufficient testimonial evidence (as no other kind exists in this case) to show that no misconduct occurred so opprobrious as to lose protection of the Act under the burden shifting test of *Burnup & Sims*, the Region should have obtained additional affidavit testimony from other known witnesses like [redacted] and [redacted] or the three employees who pushed the isolette carriage down the hallway. If the Region was unable to procure such affidavits voluntarily, it should have relied upon the issuance of investigatory subpoenas to collect testimony from witnesses too intimidated by the actions of their Employer to come forth voluntarily.

Casehandling Manual Section 10064 quoted above urges Board Agents' consider the use of investigatory subpoenas of third-party witnesses to aid in credibility resolution dilemmas:

"Third-party witnesses may often be helpful in providing evidence to assist in an administrative resolution of factual conflicts or credibility disputes. Thus, Regional Offices should, where appropriate, contact such witnesses and consider issuance of an investigative subpoena where necessary." Rooted in Section 11(1) of the Act, the Region's authority to issue such subpoenas is broad. Although the Casehandling Manual cautions that investigative subpoenas "are no substitute for a promptly initiated, dogged, and thorough pursuit of relevant evidence from cooperative sources," it reflects, almost verbatim, the language of GC Memo 00-02, granting the Regional Director "full discretion to issue precomplaint investigative subpoenas *ad testificandum* and *duces tecum* to charged parties and third-party witnesses whenever the evidence sought would materially aid in the determination of whether a charge allegation has merit and whenever such evidence cannot be obtained by reasonable voluntary means."

As such, any claim by the Region that it did not have sufficient evidence to issue complaint on these charges is incorrect and its partial dismissal decision should be overturned by the General Counsel.

VI. The Region Should Rescind Its Partial Dismissals and Issue Complaint on All Outstanding Allegations

As outlined above, the Region erred in its partial dismissal of the charges related to the disciplines and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) The Region placed improper weight on a flawed finding that the Employer's investigation was "thorough" and "unbiased;" the Region made inappropriate credibility determinations that necessarily should have been made by a trier of fact; and the Region was in possession of more than sufficient evidence to support the issuance of complaint on all allegations. Even so, the Union has procured and supplied additional evidence attached to this appeal, including the sworn declaration of (b) (6), (b) (7)(C) another witness testifying that (b) (6), (b) did not see any inappropriate conduct from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) the sworn declaration of (b) (6), (b) (7)(C) a (b) (6), (b) (7)(C) Sutter RN testifying that the only past incidences of workplace violence (b) (6), (b) can recall resulted in far less discipline issued than the instant case; and the contemporaneous text messages from (b) (6), (b) (7)(C) directly following the conversation with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), demonstrating (b) (6), (b) (7)(C) state of mind at the time and indicating no deliberate threats or intimidation occurred.

With the evidence already adduced, the additional evidence now provided, and the appropriate analysis of the applicable NRLB rules, guidance, and case law, there can be no dispute that the Region should rescind its partial dismissal and promptly issue complaint.

> If the appeal raises issues or evidence the Regional Office has not previously considered, the Regional Office should analyze the new material in its comment on appeal. If the Regional Office concludes that the appeal raises issues requiring further investigation, the Office of Appeals should be notified and the investigation promptly completed. If the appeal or further investigation leads the Regional Office to conclude that allegations in the charge warrant complaint, it should telephonically or electronically notify the Office of Appeals, prior to revocation, of its intention to revoke the dismissal.

NLRB Casehandling Manual Section 10122.8. The rules and guidance give the Region the authority to promptly issue complaint upon receipt of appeal and analysis of additional evidence provided, and it should do so immediately in these circumstances, where Section 10(j) relief should also be pursued. If the Region still believes that it has insufficient evidence to put the credibility of RNs [redacted] and [redacted] against that of an already discredited Employer, then *at a minimum* the Region should re-open the investigation in light of the issues raised herein and the supplementary evidence provided by CNA attached hereto to pursue investigatory subpoenas prior to issuance of complaint.

Conclusion

The Union respectfully but strongly disagrees with the Region's Partial Dismissal in this case. The Region's determination to dismiss those allegations concerning RNs [redacted] and [redacted] disciplines and [redacted] termination was clearly in error, and absent rescission by the Region, must be reversed by General Counsel.

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

Marie K. Walcek
David B. Willhoite
Legal Counsel

EXHIBIT 1

County of El Dorado
State of California

Sutter Medical Center, Sacramento
Case 20-CA-196911 et al.

CONFIDENTIAL WITNESS DECLARATION

I, [redacted], hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I presently work as a Registered Nurse ("RN") in the [redacted] ("[redacted]") at Sutter Medical Center, Sacramento ("Sutter"). I have worked as an RN in the [redacted] at Sutter since [redacted].

2. On or around [redacted], 2017, I attended a town hall meeting in the NICU with Sutter [redacted]. Following the town hall, I exited with my coworker and carpool companion [redacted] and I headed directly upstairs after the town hall to the 7th floor, where the [redacted] is located, to finish up some work related business. After about 15 minutes, [redacted] and I went back downstairs to depart for the day.

3. On our way out, [redacted] and I passed through the hallway in front of where the town hall was held. As we walked by, I observed [redacted] RNs [redacted], [redacted], and [redacted] standing in the hallway speaking with [redacted] [redacted]. They were standing close together in conversation. I could not hear exactly what they were saying, but I could observe that the conversation seemed passionate and I assumed that they were likely discussing some of the workplace issues that had been raised at the town hall. There was no yelling or touching going on and there was nothing about the conversation that I observed that made me concerned or worried. I continued walking down the hallway while [redacted] remained behind. I rounded the corner of the

hallway and waited there for [redacted]. From that point, I could no longer see the conversation with [redacted] and [redacted].

4. While I was waiting for [redacted], I heard [redacted] voice get a little louder. I heard [redacted] say something about being done with the conversation. I did not hear anyone else with a raised voice. Shortly thereafter, [redacted], [redacted], and [redacted] came around the corner to where I was standing. I believe [redacted] and another nurse whom I cannot remember were also there. [redacted] seemed upset and expressed concern about [redacted] and not wanting the conversation to end the way it had. A few minutes later, [redacted] came over to where we were standing, presumably after having just been with [redacted]. [redacted] told [redacted] that [redacted] wanted to speak with [redacted] was initially resistant to that idea, but I urged [redacted] to hear [redacted] out. [redacted] again expressed that [redacted] wanted to speak with [redacted] to clear things up and [redacted] said that would be OK, since [redacted] was with other people. At that point, [redacted] went upstairs to speak with [redacted] and I left the hospital together from there.

5. On or around May 5, 2017, I received a phone call from Sutter HR asking if I would be willing to speak with a Sutter attorney about what I had observed on [redacted]. I agreed to meet with the attorney. A few days later, in or around the second or third week of May, I met with the Sutter attorney. The attorney asked me to describe what I had witnessed of the conversation with [redacted] and [redacted] on [redacted]. I described what I had seen on [redacted] just as I have in this Declaration. The Sutter attorney specifically asked me if I had seen anyone touch anyone, and I responded that no, I had not. The attorney asked me how [redacted], [redacted], and [redacted] were standing and I related what I observed as I have in this Declaration. The attorney asked me if I felt that if [redacted] wanted to leave the conversation, would [redacted] have been able to do so freely, and I responded that yes, anyone would have been able to leave the

conversation freely. The attorney asked me who all I observed being present in the hallway, and I responded that the only people I observed were [redacted] and another nurse whom I could not remember. The attorney took notes from our conversation and on my answers to the questions. I do not remember if I was asked to sign anything from the meeting.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 10, 2017 in Placerville, California.

[redacted]

EXHIBIT 2

Phone ●●●○○ LTE 5:25 PM 100%

6

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Tue, (b) (6), (b) (7)(C), 6:19 PM

I just made (b) (6), (b) (7)(C) cry and I didn't mean to do that at all. Please console (b) (6), (b) (7)(C) if you can.

I feel horrible

(b) (6), (b) (7)(C) wouldn't let me apologize or talk to (b) (6), (b) (7)(C)

I really want (b) (6), (b) (7)(C) to be ok because I think (b) (6), (b) (7)(C) misunderstood what I was saying and the thing I was that I completely agree with what (b) (6), (b) (7)(C) was saying


Phone ●●●●● LTE
3:45 PM
61%
16
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
Please console (b) (6), (b) (7)(C) if you can.
I feel horrible
(b) (6), (b) (7)(C) wouldn't let me apologize or talk to (b) (6), (b) (7)(C)
I really want (b) (6), (b) (7)(C) to be ok because I think (b) (6), (b) (7)(C) misunderstood what I was saying and the thing I was that I completely agree with what (b) (6), (b) (7)(C) was saying
I am trying. I am honestly trying (b) (6), (b) (7)(C) and I don't even know what to do.
Delivered
Wed, (b) (6), (b) (7)(C), 10:26 AM
Left you a voicemail. Need to meet with you today at 2:30 in HR.
Message

EXHIBIT 3

County of Sacramento
State of California

Sutter Medical Center, Sacramento
Cases 20-CA-196911 et al.

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C), hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I have worked at Sutter for (b) (6), (b) (7)(C) total and as an RN at Sutter since (b) (6), (b) (7). I presently work in the (b) (6), (b) (7)(C) ((b) (6), (b) (7)") at Sutter. I formerly worked as [redacted] in the in the (b) (6), (b) (7) beginning in or around (b) (6), (b) (7). Prior to that, I worked as a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) [redacted] beginning in or around (b) (6), (b) (7),

2. Approximately one year ago, I became aware that nurses at Sutter were organizing to form a union with the California Nurses Association ("Union" or "CNA"). I got to know RN (b) (6), (b) (7)(C) around this time. I have interacted with (b) (6), (b) (7) frequently since then.

3. Around 2006, I heard of a workplace violence incident in the Operating Room unit. I heard from several nurses that there was a physical altercation between (b) (6), (b) (7)(C) and a (b) (6), (b) (7)(C). Although I understood the incident to be quite severe, I knew that neither of the individuals were terminated, because I continued to see them on shift after the incident. They are both still employed at the Hospital to date.

4. On or around (b) (6), (b) (7)(C) of this year, I learned that (b) (6), (b) (7)(C) had been fired for an alleged workplace violence incident. I was surprised to hear this, both because I have never known (b) (6), (b) (7) to be violent and also because I knew that in the previous, seemingly much

more serious physical alternation between the (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C), neither were terminated.

5. Shortly after I learned of [redacted] termination, I contacted the (b) (6), (b) (7)(C) involved in the prior physical altercation directly to confirm my understanding of events from what I had heard. The (b) (6), (b) (7)(C) confirmed to me that [redacted] was in fact involved in a physical altercation while at work at Sutter. According to the (b) (6), (b) (7)(C), this particular (b) (6), (b) (7)(C) had been bullying [redacted] for quite some time. That day, the (b) (6), (b) (7)(C) went to the restroom. Oh [redacted] way out, the (b) (6), (b) (7)(C) walked by and made an aggressive gesture toward the (b) (6), (b) (7)(C). After many years of harassment, the (b) (6), (b) (7)(C) snapped and responded by punching the (b) (6), (b) (7)(C). This took place in a hallway near a restroom in the Unit in a generally high-trafficked area. The (b) (6), (b) (7)(C) took the matter to HR. At first, HR did nothing. However, when another employee not involved in the incident sarcastically brought up to management that management seemingly condoned such workplace violence, both [redacted] involved were then placed on leave for a couple of days. The (b) (6), (b) (7)(C) was placed on leave while [redacted] was already out on vacation time. Both [redacted] retained employment at Sutter after the incident. Neither was placed on a last chance agreement.

6. To my knowledge, there have been no changes to the workplace violence policy between the time that incident happened and the present.

7. Approximately one year ago, a friendship between a Sutter RN and (b) (6), (b) (7)(C) [redacted] (not the one involved in the physical altercation described above) turned sour. The [redacted] began harassing the RN with phone calls and other inappropriate behavior, including contacting the RN at [redacted] home. The RN complained to management and HR regarding this behavior. HR met with [redacted] and told [redacted] to cease engaging inappropriately with the RN. After the meeting,

(b) (6), (b) (7)(C) continued to harass the RN. The RN continued to complain to HR that (b) (6), (b) felt threatened and uncomfortable, but HR did not respond any further. I am aware of this situation because I was working as an (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") at the time, and I was called in as a witness when HR spoke to (b) (6), (b) (7)(C).

8. It has been my experience at Sutter, including in my previous role as an (b) (6), (b) (7)(C) that when HR conducts investigations into misconduct, HR records witness accounts according to HR's impression and interpretation of what a witness says, rather than taking direct statements from witnesses.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 7, 2017 in Sacramento, California.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

CALIFORNIA NURSES ASSOCIATION
National Nurses United
A Voice for Nurses. A Vision for Healthcare.

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone: 510-273-2200
fax 510-663-1625

Via Electronic Mail

July 21, 2017

Janay Parnell, Field Examiner
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

RE: *Sutter Medical Center, Sacramento*
Cases 20-CA-196911, 20-CA-196913,
20-CA-196918, 20-CA-197780, 20-CA-197833

Dear Ms. Parnell,

The California Nurses Association ("CNA") submits this letter regarding the proposed Settlement Agreement ("Settlement") for the above-referenced cases against Sutter Medical Center, Sacramento ("Sutter" or "Employer"). CNA wishes to inform you that we will not be signing onto the proposed Settlement as written, nor will we be signing onto any Settlement until the resolution of our pending appeal of the Regional Director's decision to partially dismiss the above-mentioned cases. First, CNA does not believe, in light of the seriousness of the allegations in this matter, that the Employer is entitled to a Non-Admissions clause. Second, and more importantly, now that the Regional Director has agreed to reconsider [redacted] decision in light of CNA's and the individual nurses' appeals, the Region should not be approving any Settlement Agreements during the period of the appeal. As stated in the Casehandling Manual Section 10146.6 (b):

> Partial Settlement and Dismissal of Other Allegations: If the charged party agrees to settle all allegations of a single charge deemed meritorious and other allegations of the same charge are dismissed, the settlement should not normally be approved prior to the expiration of the appeal period for the dismissed allegations, if no appeal is filed, or the denial of the appeal on the dismissed allegations. If the appeal is sustained, the Regional Office should attempt to include in the settlement the allegations found meritorious on appeal. If such efforts fail, the charged party is still willing to be a party to the partial settlement, and the Regional Director concludes that under all the circumstances it would be appropriate to approve the partial settlement, refer to procedures set forth in paragraph (a) above. Otherwise, all meritorious allegations should be handled together.

Therefore, regardless of the 7-day letter, CNA will not be contemplating the execution of any Settlements, with or without a Non-Admissions clause until the Region and/or the Office of Appeals has reached a decision on the merits of CNA's and the individual nurses' appeals.

Sincerely,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

David Willhoite
Marie Walcek
Legal Counsel

cc: Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA
Sara Castle, CNA

From: Parnell, Janay
To: Marie Walcek
Subject: Re: Sutter Medical Center, Sacramento, Case 20-CA-196911
Date: Monday, July 24, 2017 5:45:42 PM

Thank you

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Marie Walcek <MWalcek@calnurses.org>
Sent: Monday, July 24, 2017 2:27:30 PM
To: Parnell, Janay
Subject: RE: Sutter Medical Center, Sacramento, Case 20-CA-196911

Hi Janay,

(b) (6), (b) (7)(C) phone number is (b) (6), (b) (7)(C)

Please let me know if you need any additional information.
Thank you,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Monday, July 24, 2017 10:59 AM
To: Marie Walcek
Subject: Sutter Medical Center, Sacramento, Case 20-CA-196911

Marie,

Can you please e-mail me the phone number for (b) (6), (b) (7)(C)?

Thanks,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

July 24, 2017

MARIE K. WALCEK, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. WALCEK:

By letter dated June 29, 2017, I dismissed the allegations in the charge that you filed against Sutter Medical Center, Sacramento on the basis that there was insufficient evidence to establish that the Employer violated Section 8(a)(1), (3), and (4) of the Act by placing three employees on administrative leave, disciplining two employees, and terminating an employee in retaliation for their protected concerted and/or union activities.

On July 13, 2017, you appealed that partial dismissal to the General Counsel. In light of the appeal, I have decided the Region will treat your appeal as a motion for reconsideration and will conduct further investigation regarding the dismissed allegations.

Very truly yours,

/s/ Jill H. Coffman

JILL H. COFFMAN
Regional Director

cc: GENERAL COUNSEL
OFFICE OF APPEALS
NATIONAL LABOR RELATIONS BOARD
1015 HALF ST SE
WASHINGTON, DC 20570

CALIFORNIA NURSES ASSOCIATION
155 GRAND AVE
OAKLAND, CA 94612

DAVE CHENEY, CEO
SUTTER MEDICAL CENTER, SACRAMENTO
2825 CAPITOL AVE
SACRAMENTO, CA 95816-5680

JATINDER K. SHARMA, ESQ.
SUTTER HEALTH - OFFICE OF THE GENERAL COUNSEL
2200 RIVER PLAZA DR
SACRAMENTO, CA 95833-4134

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From:	David Willhoite
To:	Parnell, Janay
Cc:	Vargas, Olivia; Coffman, Jill H.; Micah Berul; Marie Walcek
Subject:	RE: Sutter Sacramento--New Declarant
Date:	Monday, August 14, 2017 9:36:32 PM
Attachments:	image002.png image003.jpg

Hi Janay,

I am glad that you were able to connect with [redacted] and take the affidavit in a timely manner. Based on our conversation on Friday, I just wanted to briefly reiterate the Union's position on the appropriate legal analysis for resolving the ULP allegations against Sutter. Because it is undisputed that [redacted] and [redacted] were engaged in PCA at the time of the alleged incident upon which Sutter claims it based its discipline, the Union does not believe that a *Wright Line* analysis is the correct framework. Rather, the charge must be examined under the framework set up in *Burnup & Sims*, and subsequently *Atlantic Steel* (and *LaGuardia*), as outlined in detail in the Union's Position Statement on Appeal. As such, whether the Employer can show that it would have taken the same disciplinary action in the absence of PCA or union activity, for example by demonstrating past instances of alleged workplace violence that resulted in similar levels of discipline, is irrelevant.

Rather, to the extent the Employer may seek to demonstrate that it had a good faith belief that some misconduct warranting discipline occurred, the Charging Party need only show that any such alleged misconduct was not so egregious as to lose the protection of the act. Because the Union has presented ample evidence that no misconduct occurred, let alone misconduct so egregious as to lose protection of the Act, complaint should promptly issue. If the Employer has provided contradicting testimony alleging that such misconduct did occur, a credibility determination would be required. Such a determination must be made by an administrative law judge where no objective evidence exists discrediting one side's account of the facts.

Should the Region continue to analyze these allegations under *Wright Line*, the Union feels such analysis would be in error. However, even under *Wright Line*, the Employer cannot meet its burden to justify these disciplinary actions, especially given evidence proffered demonstrating past more egregious workplace violence issues (a fist-fight in a hallway) that did not result in anywhere close to the same level of discipline, the Region's merit finding on the closely-related unfair labor practices (prohibiting employees from discussing investigation into alleged misconduct), and the Employer's outright lie that it had no knowledge of [redacted] Union support (as demonstrated by the testimony of (b) (6), (b) (7)(C) Thank you for your continued efforts in this matter.

Yours,

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822

www.calnurses.org

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http://www.SinglePayer.com

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Monday, August 14, 2017 9:31 AM
To: Marie Walcek
Cc: Micah Berul; David Willhoite
Subject: RE: Sutter Sacramento--New Declarant

I have a phone affidavit with (b) (6), (b) (7)(C), (b) (7)(D) scheduled for today at 2:30pm.

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Parnell, Janay
Sent: Friday, August 11, 2017 3:44 PM
To: 'Marie Walcek' <MWalcek@calnurses.org>
Cc: Micah Berul <MBerul@CalNurses.Org>; David Willhoite <DWillhoite@CalNurses.Org>
Subject: RE: Sutter Sacramento--New Declarant

Okay. Thanks.

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Marie Walcek [mailto:MWalcek@calnurses.org]
Sent: Friday, August 11, 2017 3:43 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Cc: Micah Berul <MBerul@CalNurses.Org>; David Willhoite <DWillhoite@CalNurses.Org>
Subject: RE: Sutter Sacramento--New Declarant

Just heard from organizers who were able to get [redacted] schedule—[redacted] works [redacted].

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Friday, August 11, 2017 3:40 PM
To: Marie Walcek
Cc: Micah Berul; David Willhoite
Subject: RE: Sutter Sacramento--New Declarant

Okay. Thanks. I called and left [redacted] a voicemail, but I haven't heard back from [redacted] yet.

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Marie Walcek [mailto:MWalcek@calnurses.org]
Sent: Friday, August 11, 2017 1:10 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Cc: Micah Berul <MBerul@CalNurses.Org>; David Willhoite <DWillhoite@CalNurses.Org>
Subject: RE: Sutter Sacramento--New Declarant

Hi Janay,

Organizers are attempting to reach [redacted] at present (we are not aware of [redacted] schedule today). We will keep you posted as soon as we're able to reach [redacted] Please let me know if you reach [redacted] before we

do.

Thank you,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Friday, August 11, 2017 11:37 AM
To: Marie Walcek
Cc: Micah Berul; David Willhoite
Subject: RE: Sutter Sacramento--New Declarant

Marie,

Thank you for the offer of proof. (b) (6) called me this morning at 5:30am and left a voicemail stating that (b) (6), (b would try to call me again later in the morning, but I haven't heard from (b) (6), (again yet. Do you know what time (b) (6), (gets off of work?

Thanks,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Marie Walcek [mailto:MWalcek@calnurses.org]
Sent: Thursday, August 10, 2017 4:58 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Cc: Micah Berul <MBerul@CalNurses.Org>; David Willhoite <DWillhoite@CalNurses.Org>
Subject: RE: Sutter Sacramento--New Declarant

Hi Janay,

Thank you for reaching out. We have checked back in with (b) (6) and have urged (b) (6), (to return your call.

[redacted] said [redacted] will call you tomorrow morning. As I'm sure you can understand [redacted] is likely nervous about the process, given the Employer's thus-far unchecked retaliation. We had not yet sent you an offer of proof, apologies—please find below general outline of what [redacted] can testify to:

- [redacted] presently works as an RN in the [redacted] at Sutter Sacramento
- [redacted] previously worked in the [redacted] and has worked a total of approximately [redacted] at Sutter Sacramento
- [redacted] will testify that approximately 4 years ago, while on work time in the [redacted], [redacted] approached [redacted] in a patient care area and told [redacted] that [redacted] was wrong to not call an [redacted] nurse at a particular point with a patient earlier that day. [redacted] will testify that [redacted] was speaking very loudly/aggressively about this in front of the parents of the patient at issue
- [redacted] will testify that later in the same shift, [redacted] approached [redacted] at a [redacted] and asked [redacted] if in the future, [redacted] could talk to [redacted] about any work issues away from patients and/or their parents, as doing so undermines [redacted] credibility
- [redacted] will testify that [redacted] became hostile, got loud, argued with [redacted] and eventually pulled an [redacted] nurse aside to ask [redacted] in a threatening way, "shouldn't [redacted] ([redacted]) have called [redacted]?" The [redacted] nurse hesitantly agreed with [redacted] on the spot but seemed uncomfortable and later apologized to [redacted] for saying what [redacted] said to assuage [redacted]
- [redacted] will testify that [redacted] found the interaction emotionally violent
- [redacted] will testify that a few days later, [redacted] was called into then [redacted] ([redacted]) [redacted] office regarding allegations of hostile conduct toward [redacted]
    - At that meeting, an HR representative was also present. The HR rep was antagonistic and tried to get [redacted] to say that [redacted] was reasonable and [redacted] had been in the wrong. There was no definitive outcome to the meeting and [redacted] received no further discipline.
- However, shortly thereafter, [redacted] will testify that [redacted] got a bad evaluation for the first time in [redacted] career at Sutter (in the [redacted] has worked at Sutter, this is the only bad evaluation [redacted] has received)
- [redacted] will testify that [redacted] began watching [redacted] every move and [redacted] felt certain that [redacted] would try to get [redacted] fired
- [redacted] will testify that because of the interaction with [redacted] [redacted] transferred to the [redacted]
- [redacted] will testify that on [redacted] current unit, it is well known that [redacted] is unreasonable and unhinged

Thank you,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Thursday, August 10, 2017 2:23 PM
To: David Willhoite
Cc: Marie Walcek; Micah Berul
Subject: RE: Sutter Sacramento--New Declarant

(b) (6), (b) (7)(C), (b) (7)(D) isn't returning my calls. Have you sent the offer of proof yet? (I haven't seen it.)

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: Parnell, Janay
Sent: Friday, August 04, 2017 3:24 PM
To: David Willhoite <dwillhoite@calnurses.org>
Cc: Marie Walcek <mwalcek@calnurses.org>; Micah Berul <mberul@calnurses.org>
Subject: Re: Sutter Sacramento--New Declarant

Thank you. I will let you know if I need your assistance in getting affidavits from any of the employees.

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: David Willhoite <dwillhoite@calnurses.org>
Sent: Friday, August 4, 2017 9:09 AM
Subject: RE: Sutter Sacramento--New Declarant
To: Parnell, Janay <janay.parnell@nlrb.gov>
Cc: Marie Walcek <mwalcek@calnurses.org>, Micah Berul <mberul@calnurses.org>

Janay,

Here is the contact information from (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) I will send you an offer of proof for (b) (6), affidavit early next week. Were you able to take affidavits from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

Thanks,

David

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822
www.calnurses.org

Support Single-Payer *Universal Healthcare*
http://www.SinglePayer.com

From: Parnell, Janay [Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Thursday, August 03, 2017 2:01 PM
To: David Willhoite
Cc: Micah Berul; Marie Walcek; Roy Hong; Sara Castle
Subject: RE: Sutter Sacramento--New Declarant

David,

The Region prefers sworn affidavits taken by a Board agent as opposed to declarations provided by a party. Therefore, it's not necessary for you to take a declaration from the witness. Instead, can you please provide me with the witness' name and contact information so that I can schedule an affidavit with them?

The Region needs to receive all of the Union's additional evidence by the close of business on Friday, August 11th.

Thanks,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

From: David Willhoite [mailto:DWillhoite@CalNurses.Org]
Sent: Wednesday, August 02, 2017 3:50 PM
To: Parnell, Janay <Janay.Parnell@nlrb.gov>
Cc: Vargas, Olivia <Olivia.Vargas@nlrb.gov>; Coffman, Jill H. <Jill.Coffman@nlrb.gov>; Micah Berul <MBerul@CalNurses.Org>; Marie Walcek <MWalcek@calnurses.org>; Roy Hong <rhong@nationalnursesunited.org>; Sara Castle <SCastle@CalNurses.Org>
Subject: Sutter Sacramento--New Declarant

Good Afternoon Janay,

I wanted to inform you that the Union has uncovered a new witness whose declaration I will be taking on Friday morning. This witness will speak to a past experience with (b) (6), (b) (7)(C) which goes to both (b) (6), (b) (7)(C) tendency to overreact to subordinate employees, (b) (6), (subjective experience of normal workplace conversations as hostile, and to the Employer's disparate treatment of (b) (6), (b) (7 (b) (6), (b and (b) (6), (b) (in disciplining employees. I imagine that you will be concluding the re-investigation soon, and I wanted to ensure that you considered this piece of evidence. The Union is still trying to persuade another witness to come forward, so if you could please provide us with any provisional deadlines for the final submission of evidence, that would be helpful. Thank you for your continued efforts on this important matter.

Yours,

David Willhoite
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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August 28, 2017

MARIE K. WALCEK, LEGAL COUNSEL
CALIFORNIA NURSES ASSOCIATION
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. WALCEK:

By letter dated July 24, 2017, I informed you that the Region would be treating your appeal as a motion for reconsideration and would be conducting further investigation regarding the dismissed allegations.

This letter is to advise you that the Region has concluded its investigation into the matter and I have decided to adhere to my decision, as set forth in the dismissal letter, to dismiss the allegations that the Employer violated Section 8(a)(1), (3), and (4) of the Act by placing three employees on administrative leave, disciplining two employees, and terminating an employee in retaliation for their protected concerted and/or union activities. The Office of Appeals will resume its consideration of the Charging Party's appeal and it will have access to the entire case file, including evidence submitted after the appeal was filed.

Very truly yours,

/s/

JILL H. COFFMAN
Regional Director

cc: GENERAL COUNSEL
OFFICE OF APPEALS
NATIONAL LABOR RELATIONS BOARD
1015 HALF ST SE
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(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

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Via NLRB Electronic Filing

September 6, 2017

Richard F. Griffin, Jr., General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-197833

Dear Mr. Griffin,

On August 29, 2017, the California Nurses Association ("CNA" or "the Union") received notice from Region 20 of the National Labor Relations Board ("Region 20" or "the Region") that after review and conducting further investigation into the dismissed allegations in Case 20-CA-197833, the Regional Director decided to adhere to the Region's original decision to dismiss the allegations that Sutter Medical Center, Sacramento ("Sutter Sacramento" or "Sutter" or "the Employer") violated Sections 8(a)(1), (3), and (4) of the Act by placing three employees on administrative leave, disciplining two employees, and terminating an employee in retaliation for their protected concerted and/or union activities. In defending the Region's decision, the Supervisory Field Examiner handling the investigation explained that the Region again relied heavily upon the Employer's "fair" investigation; on supposedly "consistent" testimony from all parties demonstrating conduct so egregious as to lose protection of the Act; and on the legal analysis laid out in *Crowne Plaza LaGuardia*. None of these proffered reasons account for the dismissals in this case and again point to the Region's misguided analysis. Based on the Region's most recent defense of its decision, the Union hereby submits this supplemental position statement on appeal[1] to address the flawed arguments of the Region and again insist that the decision to partially dismiss must be reversed by General Counsel.

No "Consistent" Testimony Exists that would Demonstrate that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7 Engaged in Conduct So Opprobrious as to Lose Protection of the Act

In the Union's conversation with the Supervisory Field Examiner handling the investigation regarding the Region's decision to uphold its initial partial dismissal, the Supervisory Field Examiner insisted that the testimony of all the witnesses pointed to RNs (b) (6), (b) (7

[1] This supplemental position statement is intended to augment the initial position statement on appeal the Union submitted to General Counsel on July 18, 2017. The Union's initial position statement is attached hereto as **Exhibit 1**.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) getting into manager (b) (6), (b) (7)(C) "personal space" in a manner that was so egregious as to lose protection of the Act. When Union counsel pressed back, pointing out that the sworn testimony in the affidavits of (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b and (b) (6), (b) (7 and the sworn declarations of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) do not support that finding, the Supervisory Field Examiner insisted that the Region found in sum all the testimony was "consistent," particularly what each witness told the Employer during the Employer's investigation, foreclosing the need for credibility resolutions by an administrative law judge. Based on the evidence adduced in the investigation, such a determination is logically impossible.

There is nothing in the sworn testimony provided by (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b (b) (6), (b) (7)((b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) to indicate that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7 ever inappropriately encroached into (b) (6), (b) (7)(C) "personal space," in any way made physical contact with (b) (6), (b) (7)(C) blocked (b) (6), (b) (7)(C) exit, or took any actions whatsoever that could be construed as so opprobrious as to lose protection of the Act. The legal standard of such conduct is clear, and although already outlined in the Union's initial position statement on appeal, a closer legal analysis addressing this issue is further explicated below. Before addressing the legal analysis, however, it is imperative, given the Region's apparent finding that all testimony "consistently" supported a finding of egregious misconduct, to provide a focused account of the sworn testimony concerning the interaction between (b) (6), (b) (7)(C) (b) (6), (b) (7)((b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that the Region concludes constitutes conduct that is so beyond the pale as to cause these Nurses to lose the protection of the Act[2]:

- On (b) (6), (b) (7)(C), 2017, the Employer held a town hall meeting with the (b) (6), (b) (7)(C) nurses that was attended by Sutter Sacramento (b) (6), (b) (7)(C) and several other layers of Sutter management, including (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (7)(D) Aff., 9:20-12:12; (b) (6), (b) (7)(C), (Aff., 8:17-9:22; (b) (6), (b) (7 Aff., 3:22-4:16; (b) (6), (b) (7)(C) Decl., ¶ 4; (b) (6), (b) (7)(C Decl., ¶ 2.
- Immediately following the town hall, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) began talking in the hallway outside the town hall space about the preceding meeting and about a suggestion board that was, per (b) (6), (b) (7)(C) instruction, to be put up in the Unit to address nurses' concerns with working conditions. (b) (6), (b) (7)(C), (b) (7)(D) Aff., 12:13-17; (b) (6), (b) (7)(C), Aff., Exh. 14[3]; (b) (6), (b) (7 Aff., 4:19-20; (b) (6), (b) (7)(C) Decl., ¶ 5.
- RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) joined the conversation that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were having. (b) (6), (b) (7)(C), (b) (7)(D) Aff., 12:13-17; (b) (6), (b) (7)(C), (Aff., Exh. 14; (b) (6), (b) (7 Aff., 4:19-5:8; (b) (6), (b) (7)(C) Decl., ¶ 5; (b) (6), (b) (7)(C Decl., ¶ 3.
- The entirety of the conversation between the nurses and (b) (6), (b) (7)(C) concerned the immediately preceding town hall, where to place a flip-chart/suggestion board so that RNs could express workplace concerns on the unit, nurse-to-patient ratios, and

[2] A broader statement of facts is already laid out in the Union's initial position statement on appeal. The facts set forth herein are intended to focus more specifically on the precise allegations of misconduct by a close and direct read of sworn testimony of witnesses to the alleged incident.

[3] Note that Exhibit 14 to (b) (6), (b) (7)(C), (affidavit is incomplete—(b) (6), (b) (7)(C), (complete notes surrounding the (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C) investigatory meeting in which (b) (6), (b) (7)(was placed on administrative leave are three full pages long, but only two pages made it into the affidavit. A complete copy of (b) (6), (b) (7)(C), (April 11 and (b) (6), (b) (7)(C) notes is attached here as **Exhibit 2**.

communication with management. [redacted] Aff., 12:15-13:7; [redacted] Aff., Exh. 14; [redacted] Aff., 4:20-5:13; [redacted] Decl., ¶ 5.

- At one point during the conversation, approximately 4-5 other employees walked down the hallway pushing a transport isolette, which forced [redacted] and [redacted] to move over to one side of the hallway to make room. [redacted] Aff., Exh. 14; [redacted] Aff., 6:2-4.
- During the conversation, [redacted] repeatedly interrupted the nurses while they were raising legitimate workplace concerns by raising [redacted] hand up to silence them and saying, "yeah, but…" [redacted] Aff., 13:7-9; [redacted] Aff., 5:13-15.
- Recognizing that [redacted] interruptions were hindering the conversation and making it more difficult for the nurses to express their shared concerns with management, [redacted] spoke up and told [redacted] that it was an ineffective communication strategy when [redacted] would put [redacted] hand up and interrupt the nurses saying, "yeah, but…" – [redacted] demonstrated the hand motions of [redacted] while explaining. [redacted] Aff., 13:8-14; [redacted] Aff., 10:3-4; [redacted] Aff., 5:15-17.
- [redacted] then started crying, turned, and walked away from the conversation on [redacted] own down the hall yelling something along the lines of, "I'm only human." [redacted] Aff., 13:14-15; [redacted] Suppl. Aff., 2:18; [redacted] Aff., 10:5-6 and Exh. 14; [redacted] Aff., 5:17-19; [redacted] Decl., ¶ 6.
- At no point during the conversation did [redacted] or [redacted] raise their voices, make any physical contact with [redacted] point fingers at [redacted] act aggressively toward [redacted] back [redacted] up against a wall, use profanity, or block or restrain [redacted] from exiting the conversation. [redacted] Aff., 14:21-15:7; [redacted] Aff., 10:6-8, 10:18-19, and Exh. 14; [redacted] Aff., 6:1-8 and 6:15-19; [redacted] Decl., ¶ 8; [redacted] Decl., ¶s 3-5.

By the Region's account of its investigation and conclusions, the above stated sequence of events is "consistent" with all other testimony and with what was reported in the Employer's investigation. As explained below, these conclusions do not align with the Region's ultimate decision to partially dismiss this case, which is inconsistent with all applicable guidance and caselaw and ultimately antithetical to the Act.

As clearly evidenced comparing the sworn testimony outlined above with the termination and discipline notices issued to [redacted] and [redacted] the accounts of the five witnesses outlined above are unambiguously *not* "consistent" with the Employer's version of events. Specifically, [redacted] termination notice states that [redacted] used [redacted] body to "physically touch the [redacted] body in an aggressive manner," that [redacted] "was pointing [redacted] finger in the [redacted] face," that [redacted] used a "raised voice to shout at the [redacted]," and that [redacted] backed [redacted] up against a wall and "physically blocked the [redacted] from being able to walk away." Further, the disciplinary notices of [redacted] and [redacted] state that that each exhibited "hostile, intimidating and threatening behavior" toward [redacted] that they backed [redacted] up against a wall and surrounded [redacted] and that "an observing employee was prompted to intervene to remove the [redacted] from the situation." All of this is *directly* contradicted by the sworn testimony of [redacted] and [redacted] as outlined above. See, again, [redacted] Aff., 14:21-15:7; [redacted] Aff., 10:6-8, 10:18-19, and Exh. 14; [redacted] Aff., 6:1-8 and 6:15-19; [redacted]

Decl., ¶ 8; [redacted] Decl., ¶s 3-5. Therefore it defies logic that the Region could assert that there was "consistent" testimony to support the Employer's purported rationale for firing [redacted] and suspending [redacted] and [redacted]

In an even more galling instance of misguided analysis, the Region continues to insist that in making its determination, the Employer's investigation was of paramount importance. This is a dangerous assertion for two reasons. First, as outlined in greater detail in the Union's initial position statement on appeal, whether or not the Employer conducted a thorough investigation and concluded in good faith that some misconduct occurred is irrelevant. Simply stated, the appropriate analysis under *Burnup & Sims* is that an employer who discharges an employee in the good faith but mistaken belief that the employee has engaged in misconduct in the course of protected activity commits an unfair labor practice. *N.L.R.B. v. Ideal Dyeing & Finishing Co.*, 956 F.2d 1167 (9th Cir. 1992). "Over and again the Board had ruled that s 8(a)(1) is violated if an employee is discharged for misconduct arising out of a protected activity, despite the employer's good faith, when it is shown that the misconduct never occurred." *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23, 85 S. Ct. 171, 172, 13 L. Ed. 2d 1 (1964) (citing *Mid-Continent Petroleum Corp.*, 54 N.L.R.B. 912, 932—934; *Standard Oil Co.*, 91 N.L.R.B. 783, 790—791; *Rubin Bros. Footwear, Inc.*, 99 N.L.R.B. 610, 611). "[T]he employer's good faith is simply not relevant if the misconduct did not occur." *Shamrock Foods Co. v. NLRB*, 346 F.3d 1130 (2003).

Accepting for a moment the Region's conclusion that the Employer's investigation was thorough and unbiased and that the Employer reasonably concluded that some egregious workplace violence incident did occur, the Region should still have then conducted its own independent investigation, completely separate and apart from the Employer's allegedly "good faith" investigation, and examined the evidence produced to make a determination regarding whether the alleged misconduct did in fact occur. Then, even if the Region were convinced through its own independent investigation that some misconduct did occur on the part of [redacted] and/or [redacted] in applying the appropriate *Burnup & Sims* analysis, the Region should then have assessed whether that misconduct was so egregious as to lose protection of the Act, again completely separately and apart from whatever conclusions reached by the Employer in its investigation. See *Consolidated Communications, Inc. v. NLRB*, 837 F.3d 1, 8 (D.C. Cir. 2016), *King Soopers, Inc. v. NLRB*, 859 F.3d 23, 36 (D.C. Cir. 2017). That the Region is continuing to compare its own investigation with the Employer's is a troubling turn from established guidance and caselaw and again suggests that the Region is conflating the appropriate *Burnup & Sims/Atlantic Steel* analysis with *Wright Line*. And to the extent the Region is of the view that it did conduct its own investigation, and did not rely on the Employer's investigation, again, the affidavit testimony discussed above clearly and convincingly demonstrates no conduct occurred so opprobrious as to lose the protection of the Act.

The analytical error of continued emphasis on the Employer's investigation has led the Region to rely on the witness accounts in the Employer's investigatory report over independent sworn testimony, including the sworn affidavits taken by the Region itself. The Region has insisted that "according to the information the Employer had," [redacted] and [redacted] did

act inappropriately by "blocking" [redacted] from leaving the conversation and [redacted] in particular got into [redacted] "personal space." When the Union pushed back on this, pointing to the direct contradictory testimony contained in the sworn statements from [redacted] and [redacted] the Region responded by insinuating that what some of those witnesses told the Employer during the Employer's investigation may have been different. This rhetoric is beyond unacceptable and should be grounds alone for reversing the Region's decision. It should go without saying that even if the Employer had taken direct statements from employees in their own words and had afforded the employees an opportunity to review and revise, such statements are irrelevant when contradicted by affidavit testimony procured by the Region and recounted under penalty of perjury. The intimidation of providing a statement to one's Employer in and of itself is bound to yield a less-than-perfect account given the power dynamic involved. Further, in the present scenario, these employee witnesses were *not* permitted to provide written statements to the Employer in their own words or with an opportunity to review the Employer's version of their oral responses to investigatory questioning. Rather, each witness was asked questions and their answers were recorded, second-hand, by an agent of the Employer. No employee witness was allowed to see the notes that were taken by the Employer nor were they allowed to provide their own written statement to be included in the Employer's report. Instead, the Employer created an account based on its own interpretation (and motives) regarding what occurred. See [redacted] Decl., ¶ 8. In fact, the only written account of the Employer's "investigation" that [redacted] were allowed to review was contained in each of their disciplinary notices. The Employer's account of events in the disciplinary notices so outrageously differed from their own accounts, based both on what they provided to the Employer and to the Region, that [redacted] each wrote on their respective notices that they disagreed with the content contained therein. See attached each signed disciplinary notice attached here as **Exhibit 3**. These discrepancies arose even though [redacted] each recounted what they witnessed from the alleged incident to the Employer exactly as they did in their affidavits and sworn declarations. See [redacted] Aff., 14:18-19; [redacted] Aff., Exh. 14; [redacted] Aff., 6:18-19; [redacted] Decl., ¶ 8; [redacted] Decl., ¶ 5. Clearly, the Employer's account of what witnesses supposedly said is not consistent with actual witness testimony. This being the case, the Region is required to accept the affidavit testimony it gathered over and above any hearsay evidence.

Despite these obvious discrepancies between the Employer's second- and third-hand accounts and direct witness testimony, the Region maintains that all accounts were "consistent" and all accounts affirm that [redacted] got in [redacted] "personal space" and that [redacted] had backed [redacted] against a wall and blocked [redacted] from exiting the conversation. To reach the conclusion that all witness accounts consistently uphold that version of events, the Region either completely ignored the sworn statements of [redacted] or at minimum placed more weight behind accounts in the Employer's investigatory report and/or affidavit statements of other witnesses procured by the Region. Whatever the case, it is apparent that the Region has, either consciously or unconsciously, credited the testimony of certain witnesses and accounts above others. [redacted] all maintain that [redacted] was never "backed up against a wall," nor was [redacted] "blocked" from exiting the conversation. [redacted] all deny

that [redacted] was acting aggressively or inappropriately or that [redacted] was in [redacted] "personal space." That being the case, there clearly exists here conflicting narratives from eyewitnesses that *must* be resolved by a trier of fact. As recited in greater detail in the Union's initial position statement on appeal, in such a scenario with a clash of testimonies and the case therefore turning primarily on credibility resolutions, such resolutions must necessarily be resolved by a trier of fact, not in the preliminary Board investigatory process. NRLB Casehandling Manual Part 1: Unfair Labor Practice Proceedings, Section 10064.

Alternatively, if all witness statements do in fact align precisely with the sworn statements of [redacted] as outlined above, then it follows that the Region, again wildly diverging from established caselaw, has concluded that the above stated sequence of events constitutes misconduct so opprobrious as to lose protection of the Act and to justify termination of a veteran employee with a spotless record. If the Region has thusly concluded that three employees directly engaged in protected concerted activity should lose protection of the Act because a manager was offended by a critique of [redacted] communication style, the Region has created an entirely new and dangerous precedent of what constitutes misconduct sufficient to remove protection of the Act. As outlined below, the legal standard here is clear and the Region has grossly erred in its review and analysis of this case at the cost of jeopardizing three employees' livelihoods and devastating a union organizing campaign.

[redacted], and [redacted]'s Actions Were Not Sufficient to Remove Protection of the Act

In the post-determination discussion with the Supervisory Field Examiner, the Union learned that the Region placed a great deal of emphasis on the Board's holding in *Crowne Plaza LaGuardia*, 357 NLRB 1097 (2011). During the course of the initial investigation, the Region informed the Union that it was examining the allegations under the rubric of that case, and the Union submitted an additional position statement June 22, 2017 specifically addressing an analysis of the facts as rendered in *LaGuardia*. A copy of that June 22 position statement is attached here as **Exhibit 4**.

As noted above and discussed extensively in the Union's initial position statement on appeal, under a *Burnup & Sims* analysis, once it is established that an employee was disciplined "for conduct that is part of the res gestae of protected concerted activities, the relevant question is whether the conduct is so egregious as to take it outside the protection of the Act." *Goya Foods, Inc.* 356 NLRB 476, 477 fn. 11 (2011). That leads the legal analysis to an examination of the facts under the four part *Atlantic Steel* test. *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979). It is undisputed that the conduct of [redacted] and [redacted] constituted protected concerted activity. Further, it is well established that where the conduct at issue arises from protected activity, as here, the Board does not consider such conduct as a separate and independent basis for discipline. *Id.*, see also *Tampa Tribune*, 351 NLRB 1324, 1326 fn. 14 (2007), enf. denied on other grounds sub nom. *Media General Operations, Inc. v. NLRB*, 560 F.3d 181 (4th Cir. 2009).[4]

[4] This same footnote also remarks that a *Wright Line* analysis is inappropriate where there is an absence of dispute about the Employer's motives for taking an adverse employment action. While the Union certainly believes that [redacted] role as a known leader of the Union's organizing campaign in the [redacted] was the *causa sine qua non* of [redacted] termination, the stated reason for [redacted] termination was [redacted] interaction with [redacted] The same can be said

LaGuardia examines but one example of conduct by employees sufficient to lose protection of the Act; however, there are a plethora of others, many more closely mirroring the present facts than *LaGuardia* itself.

As mentioned above and set forth in the Union's previous position statement, longstanding Board precedent establishes that "employees are permitted some leeway for impulsive behavior when engaging in concerted activity," subject to the employer's right to maintain order and respect. *Piper Realty Co.*, 313 NLRB 1289, 1290 (1994). To assess whether an employee's conduct is so opprobrious that it outweighs his or her Section 7 rights, the Board applies the balancing test set forth in *Atlantic Steel*, supra. This test involves balancing four factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. *Atlantic Steel*, 245 NLRB at 816. Although *LaGuardia* addresses all four factors, the Region appears to be focused on the decision's third factor analysis.

In *LaGuardia,* the Board held that three employees who *deliberately* and excessively touched their supervisor *with an effort to restrain him* as a means of presenting him with an employee-signed petition forfeited protection under the Act. *LaGuardia*, supra at 1101. There, one employee deliberately grabbed the supervisor's shoulder to prevent him from leaving and reached around his waist with the petition; another employee pushed her chest against the supervisor and moved from side to side, deliberately blocking his exit; a third employee deliberately grabbed the supervisor's arm to restrain him from fleeing. *Id.* at 1098. The Board held that such deliberate physical contact "reasonably threatened [the supervisor] and the Respondent's ability to maintain workplace order and discipline." *Id.* at 1101. However, a fourth employee did not forfeit protection of the Act for briefly touching a security guard's wrist as the guard waved his arms to clear a path for the supervisor. *Id.* Because the fourth employee did not deliberately touch the security guard with any direct intention to restrain or threaten him, her conduct was materially different from the other three employees, and therefore her discipline was protected under the Act, and the Employer violated 8(a)(1) in bringing discipline against her. *Id.*

Because of the facts in *LaGuardia* and the allegations in the Employer's disciplinary notices to the RNs, the Union assumed that the Employer was maintaining that [redacted] physically touched [redacted] in a deliberate attempt to restrain [redacted] However, after the Union's conversations with the Supervisory Field Examiner, the Union understands that the Region concluded that the alleged misconduct committed in the course of PCA was merely that [redacted] infringed upon [redacted] personal space and that [redacted] felt surrounded and was prevented from exiting the conversation, *not* that physical contact was made[5]. Because of the gravity of this case, both in its impact on the lives of dedicated and compassionate

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for the disciplines of [redacted] and [redacted] (additionally, [redacted] initiated a State Department of Public Health claim against the Employer). Should the Office of Appeals determine that a *Wright Line* analysis is appropriate, the Union has addressed this issue in its June 6, 2017 position statement.

[5] The Supervisory Field Examiner emphasized that the Region concluded that [redacted] was in [redacted] "personal space" and that "even if [redacted] did not touch [redacted] conduct still forfeited the protection of the Act.

caregivers and on the success of a fledgling organizing campaign, and in light of the recent and highly instructive decision of ALJ Thomas Randazzo in *Greyhound Lines, Inc. and Louis Little (An Individual)*, in Case 08-CA-181769[6], the Union believes it appropriate to offer further analysis of the case under *Atlantic Steel*. Although only persuasive authority as an ALJ decision, the *Greyhound Lines* decision itself catalogues a vast array of decisions by the Board finding far more egregious conduct than that alleged to have been committed by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) insufficient to lose protection of the Act.

In *Greyhound Lines*, long-time employee and Union steward Louis Little was terminated by his Employer after an interaction with his supervisor, Heben, regarding working conditions. *Greyhound Lines, Inc. & Louis Little, an Individual*, 08-CA-181769, 2017 WL 3225839 (July 21, 2017). During Little's conversation with Heben, Heben repeatedly pointed his finger at Little. *Id.* In response, Little retorted, "just like you're putting your finger in my face, I can put my finger in your face" and then Little "pointed his finger at Heben and said that he could 'say whatever the fuck [he] want[ed] to say.'" *Id.* Little and Heben were standing "very close" together at the time. *Id.* The Employer further alleged that Little struck Heben during the course of the same interaction, which Little denied. *Id.* This clash in testimony was rightly resolved by the ALJ hearing the case, who ultimately determined that Little did not strike Heben, but that Little did raise his voice, use profanity (including the words "damn," "shit," and "fuck"), and use "aggressive" hand gestures, which included swinging his hand in front of his body with a pointed finger for emphasis at Heben while standing very close to Heben in a hallway and on platform dock area in the work facility. *Id.* Ultimately the ALJ determined that Little's conduct during the course of protected concerted activity did not rise to a level so opprobrious as to lose protection of the Act.

In making this determination, ALJ Randazzo's description of the third *Atlantic Steel* factor is particularly compelling:

> In assessing whether an employee's protected conduct loses the protection of the Act, the Board recognizes that disputes over working conditions are the type most likely to cause ill feelings and strong responses. *Kiewit Power Constructors Co.*, 355 NLRB 708, 710 (2010), enfd. 652 F.d 22 (D.C. Cir. 2011) citing *Consumers Power*, 282 NLRB 130, 132 (1986). The Board has held that in deciding whether conduct is removed from the protection of the Act, it determines whether the conduct is "so violent or of such serious character as to render the employee unfit for further service." *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204-205 (2007), enfd 519 F.3d 373 (7th Cir. 2008). In an attempt to distinguish between protected conduct that maintains the Act's protection from that which is so egregious that it loses its protection, the Board has found that a line "is drawn between cases where employees engaged in concerted activities that exceed the bounds of lawful conduct in a moment of animal exuberance or in a manner not motivated by improper motives and those flagrant cases in which the misconduct is so violent or of such a character as to render the employee unfit for further service." *Kiewit*

[6] The ALJD in *Greyhound Lines* issued three days after the Union submitted its position statement on appeal.

Power, supra at 710,citing *Prescott Industrial Products Co.*, 205 NLRB 51, 51-52 (1973)." *Id.*

The notion that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) acted with "improper motives" and engaged in "misconduct so violent…as to render the[m] unfit for further service" would be laughable were the consequences not so serious. The Region's failure to properly draw the line between truly threatening and grossly insubordinate behavior compared to an alleged moment of, at most, "disrespectful, rude, and defiant" behavior has potentially ruined the career of a veteran (b) (6), (b) (7)(C) nurse with exemplary evaluations and a spotless disciplinary record and threatened the careers of two others. *Goya Foods, Inc.*, 356 NLRB at 478; See *Severance Tool Industries*, 301 NLRB 1166, 1170 (1991), enfd. mem. 953 F.2d 1384 (6th Cir. 1992) (where the Board found an employee's "disrespectful, rude, and defiant demeanor and the use of a vulgar word" during the course of protected activity insufficient to cause him to lose the Act's protection, notwithstanding the employer's characterization of the conduct as "insubordinate, belligerent, and threatening.") The Board has held that such statements which are "single, brief, and spontaneous reactions" by an employee and not "premeditated and sustained personal threats" are not sufficient to remove the protection of the Act from the protected activities. *Kiewit Power*, supra at 710; see also *Burle Industries*, 300 NLRB 498 (1990), enfd. 932 F.2d 958 (3d Cir. 1991). There is simply no "consistent" evidence to support that (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C) constituted premeditated, sustained personal threats. The Union is not in a position to know whether the Employer provided any evidence to suggest otherwise. If it did, however, again, credibility resolutions by a trier of fact are required.

The Region's purported reliance on *LaGuardia* further raises eyebrows because (b) (6), (b) (7)(C) termination notice specifically cites (b) (6), (violation of the Employer's workplace violence policy. However, in *LaGuardia* the Board cites *Louisiana Council No. 17*, 250 NLRB 880, 882 (1980) approvingly for the principal that employees who are engaged in protected concerted activities "generally do not lose the protective mantle of the Act simply because their activity contravenes an employer's rules or policy." *LaGuardia*, 357 NLRB at 1101.

Again the application of *LaGuardia's* fact pattern to that of the instant case is inapt. It forces the Region into a Hobbesian choice: either the Region has concluded that the preponderance of evidence establishes that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7 indeed deliberately physically cornered, restrained, and blocked (b) (6), (b) (7)(C) from exiting a hostile situation contrary to the entirety of their sworn testimony; or the Region has found all testimony to be consistent with that of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7 and nonetheless concluded that despite there being no such cornering, restraining, or blocking, the fact that (b) (6), (b) (7)(C) put up (b) (6), (hand to mirror (b) (6), (b) (7)(C) own hand motion back to (b) (6), (and (b) (6), (b) (7)(C) and (b) (6), (b) (7 standing close to (b) (6), (b) (7)(C) constituted conduct so opprobrious as to lose protection of the Act. If the Region has adopted the former position, it has discredited sworn testimony of three to five witnesses and thereby rendered an unacceptable credibility determination reserved for an administrative law judge. If the Region has adopted the later position, it renders their reliance on *LaGuardia* unintelligible, and, more importantly, runs counter to established Board law regarding the severity of conduct necessary to forfeit the Act's protection.

General Counsel Must Reverse the Region's Partial Dismissal

It is clear that even after review and reconsideration of its original decision, the Region continues to misapply the appropriate procedural and analytical framework in this case. It bears repeating that the stakes in this case are dire: three nurses have had their reputations sullied and their livelihoods threatened and one veteran nurse and key, outspoken Union supporter has been terminated in the midst of an ongoing union organizing campaign. [redacted] and [redacted] have been faced with returning to work with a mark of "workplace violence" on their records and [redacted] has had to struggle to find alternate work with the same "workplace violence" record and allegations of "intimidating and threatening behavior" and suggestions of physical assault.

Prior to the Employer learning of [redacted], [redacted], and [redacted] protected concerted and Union activities, these nurses were held in very high regard by the Employer. Again, these three nurses had a combined 60 years of unblemished work records at Sutter and stellar reviews to match. In fact, in a recent Employer evaluation of [redacted] attached to [redacted] affidavit, [redacted] specifically was identified as an employee who "[redacted]" "[redacted]" and "[redacted]" [redacted] was rated by Sutter as a "[redacted]" in the area of Honesty & Integrity and [redacted]'s manager wrote of [redacted] that "[redacted] willingly accepts work direction from supervisor and appropriate team members." Sutter's praise of [redacted] and [redacted] has been equally glowing. In a recent Sutter evaluation of [redacted] attached to [redacted]'s affidavit, Sutter wrote of [redacted] that [redacted] "[redacted]" and that [redacted] "[redacted]" and "[redacted]" In a later evaluation, Sutter commended [redacted] on [redacted] honesty and integrity, noting that [redacted] "[redacted]" Similarly, [redacted] most recent evaluation states that [redacted] "[redacted]" is [redacted]" and "[redacted]"[7] While such evidence as to the Nurses' work records and character are instructive under a *Wright Line* analysis, such evidence is also highly relevant here in assessing whether the Region could logically conclude that conduct so opprobrious in fact occurred to justify the firing and suspension of the three nurses without making credibility determinations, as the Region claims.

Given the well-established records of these nurses, the accusations against [redacted] and [redacted] are outrageous and must be carefully and appropriately assessed. The framework provided by *Burnup & Sims* requires that the Employer be found in violation of the Act where [redacted] and [redacted] were wrongly disciplined for alleged misconduct that did not occur, regardless of the Employer's supposed good faith efforts in its investigation. As stated previously, the underlying principles of *Burnup & Sims* are particularly relevant here:

[7] [redacted] recent evaluations were not attached to [redacted] affidavit. They are attached here as **Exhibit 5**.

> That rule seems to us to be in conformity with the policy behind s 8(a)(1). Otherwise the protected activity would lose some of its immunity, since the example of employees who are discharged on false charges would or might have a deterrent effect on other employees. Union activity often engenders strong emotions and gives rise to active rumors. A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acted in good faith. It is the tendency of those discharges to weaken or destroy the s 8(a)(1) right that is controlling. We are not in the realm of managerial prerogatives. Rather, we are concerned with the manner of soliciting union membership over which the Board has been entrusted with powers of surveillance.

Burnup & Sims, supra, at pp. 23-24, 85 S.Ct. at pp. 172, 173. It is all too painfully clear here that the Region has made an egregious error in its determination, which could have only been reached by one of two equally improper avenues.

The first is that the Region, accepting the sworn testimony of [redacted] and [redacted] has determined that where an employee addresses a manager about workplace conditions, without raising [redacted] voice, without making any physical contact, without blocking or restraining, without profanity, and with only the best intentions to improve working conditions, by merely standing close to a manager or demonstrating a hand gesture used repeatedly by the manager, that the employee loses protection of the Act. Were this reasoning to be upheld, workers everywhere would face an unprecedented new standard of conduct while engaging in protected concerted activity. If employees cannot collectively discuss workplace issues with management without so much as a raised hand, the voice of workers everywhere will be muted. If employees with decades of unblemished service cab be lawfully fired or suspended because a manager was offended by honest critique in an attempt to improve workplace conditions, the very essence of the Act will be subverted.

Alternatively, the Region has erroneously made credibility determinations to conclude that the explicit sworn testimony of [redacted] and [redacted] should be discounted. To the extent that some evidence in the form of sworn witness testimony may have been produced by the Employer to indicate that [redacted] and/or [redacted] did engage in conduct so violent as to render them unfit for further service, say by physically assaulting and/or aggressively and intentionally restraining [redacted] as the Employer's disciplinary notices suggest, again, such evidence is in direct contradiction to sworn witness testimony provided by at least five other eyewitnesses.[8] As such, a credibility determination by an administrative law judge is required and the Region should have issued complaint accordingly. If the Region's decision to partially dismiss is upheld on these grounds, an entirely new procedural standard would be

[8] To repeat, according to the explicit, sworn testimony of [redacted] at no point during the conversation with [redacted] did [redacted] or [redacted] raise their voices, make any physical contact with [redacted] point fingers at [redacted] act aggressively or threateningly toward [redacted] back [redacted] up against a wall, use profanity, or block or restrain [redacted] from exiting the conversation. It must also be stressed that the nurses requested any videotaping of the incident that the Employer may have had in its possession, demonstrating that they knew that they had not engaged in any egregious conduct to justify possibly termination or suspension.

created, flouting requirements of due process and completely flipping the legislative structure of Board proceedings.

As the Region has inappropriately declined to issue complaint in this case, it is incumbent upon General Counsel to correct this appalling error in order to uphold the Act and offer protection to Sutter employees engaging in the most basic and essential forms of protected concerted activity.

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

Marie Walcek
David Willhoite
Legal Counsel

cc: Jill Coffman, NLRB Region 20 Regional Director
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
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EXHIBIT 1

Supplemental Position Statement on Appeal
Sutter Medical Center, Sacramento
Case 20-CA-197833

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A Voice for Nurses. A Vision for Healthcare
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Via NLRB Electronic Filing

July 18, 2017

Richard F. Griffin, Jr., General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-197833

Dear Mr. Griffin,

The California Nurses Association ("CNA" or "Union") hereby appeals the decision of the Regional Director of Region 20 to partially dismiss the above-referenced unfair labor practice charge filed against Sutter Medical Center, Sacramento ("Sutter" or "Employer"). This appeal involves a textbook case of an employer wielding unbridled power in the workplace to send an unequivocal message designed to halt a union organizing campaign by firing a high profile union supporter and disciplining two others for exercising their right to speak up on behalf of their coworkers. This case is unusual in three important respects justifying close scrutiny on appeal. First, the Employer falsely accused a long serving registered nurse with a flawless record of engaging in "workplace violence" allegedly directed at a (b) (6), (b) (7)(C) – a criminal, or at a minimum, quasi-criminal charge – unsupported by the record. Second, the Region conflated the applicable legal standard, erroneously crediting the Employer's conclusion based on the Region's assertion that the Employer conducted a "thorough" and "unbiased" investigation in the face of directly contrary, consistent reports provided by the several staff nurses who were present when the alleged "workplace violence" occurred. Third, the Region deemed certain witnesses to be "neutral" and therefore gave their testimony added weight without any objective supporting evidence, thereby inappropriately making flawed credibility determinations in the investigatory stage.

Specifically, during an initial organizing campaign, the Employer disciplined three primary Union supporters, including terminating a key nurse leader, alleging that the nurses engaged in workplace violence in the midst of protected, concerted activity ("PCA"). Despite sworn statements from four nurses involved stating that no inappropriate physical or otherwise aggressive misconduct took place, the Region based its decision on the Employer's supposed good faith investigation, erroneously morphing *Atlantic Steel* and *Wright Line* analysis. Stunningly, the Region saw the Employer's account of what occurred as more "neutral," implicitly and improperly rendering credibility determinations of the accounts in the Employer investigation and discounting the contradictory witness statements provided by those nurses directly involved in the alleged incident. For the reasons set forth below, the Decision to Partially

Dismiss must be reversed, or the Region should consider this appeal as a motion for reconsideration in light of the additional evidence and argument set forth in this appeal. Upon a careful review of the evidence, it is abundantly clear that complaint should issue with regard to all allegations in the charge filed by Union and the related charges filed by the individual nurses who were disciplined.

Background

Unfair Labor Practice charges were filed with Region 20 of the National Labor Relations Board ("the Region") by Sutter registered nurses ("RN"s) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] on April 13, 2017 (Case Nos. 20-CA-196911, 20-CA-196918, 20-CA-196913, respectively), by RN (b) (6), (b) (7)(C) on April 25, 2017 (Case No. 20-CA-197780), and by the Union on April 28, 2017 (Case No. 20-CA-197833) alleging, collectively, that Sutter violated Sections 8(a)(1), 8(a)(3) and 8(a)(4) of the National Labor Relations Act ("the Act") by:

- Placing three employees on administrative leave in retaliation for their protected concerted and/or union activities;
- Disciplining two employees in retaliation for their protected concerted and/or union activities;
- Terminating an employee in retaliation for [redacted] protected concerted and/or union activities;
- Maintaining and enforcing an unlawful policy prohibiting employees from discussing investigations of alleged employee misconduct and/or discipline of employees;
- Interrogating employees about their protected activities; and/or
- Threatening employees with reprisals for their protected activities.

The allegations were supported by the affidavit testimony of RNs [redacted] and [redacted] as well as (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and all of the documentary evidence attached thereto. The allegations were also supported by the sworn declarations of RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) The Employer provided no objective evidence to refute the charges. Rather, the Employer provided the Region with a copy of its own internal investigation documents, which included third-hand hearsay accounts of what the Employer concluded to be "workplace violence," as reported and documented by the Employer's direct agents. According to the Region, several accounts as reported by the Employer contradicted the sworn statements of [redacted] The Employer further claimed that it had no knowledge of any of the RNs involvement in or support of any Union organizing efforts at the facility. This claim was directly rebutted by sworn testimony provided in support of the charge.

On June 29, 2017, the Region issued a partial dismissal of those allegations based on the disciplines of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] In its dismissal letter the Region stated that there was insufficient evidence to establish that the Employer engaged in the following conduct: (1) placing three employees on administrative leave in retaliation for their protected concerted and/or union activities; (2) disciplining two employees in retaliation for their protected concerted and/or union activities; and (3) terminating an employee in retaliation for [redacted] protected concerted and/or union activities. The remaining allegations regarding the Employer's maintenance and

enforcement of an unlawful policy prohibiting employees from discussing workplace investigations with their coworkers, and its interrogation of and threats to RN (b) (6), (b) (7)(C) regarding the aforementioned policy were found meritorious and remain subject to further processing.

Statement of Facts

With deteriorating working conditions creating unsafe staffing assignments among a host of other serious workplace issues, nurses in the (b) (6), (b) (7)(C) ("[redacted]") at Sutter Sacramento began in recent years to increase collective efforts to improve working conditions and advocate for better staffing, patient safety, and communication with management. Sutter [redacted] RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and [redacted] rose as known leaders in their unit, gathering grievances from coworkers and bringing collective concerns to management in an attempt to better the working conditions in the unit.

They advocated via meetings and letters to their managers and even reported the hospital's unsafe practices to the State Department of Public Health, which stepped in temporarily to address unsafe staffing, but the [redacted] nurses' concerns were ignored by management. The ratio of nurses to patients remained at unsafe levels, and nothing was done to coordinate the assignments of patients to nurses in a way that made sense given the physical space in which the unit operates. With these serious concerns going unaddressed, [redacted] reached out to CNA in early 2016 to discuss the potential for unionization at the facility. [redacted] discussed these issues and the potential for union representation with [redacted] colleagues, including [redacted] and [redacted] (b) (6), (b) (7)(C) [redacted] and [redacted] quickly became established and recognized leaders in the effort, regularly meeting with CNA organizers, attending meetings, and talking to coworkers about unionizing.

(b) (6), (b) (7)(C) [redacted] and [redacted] leadership in these areas did not go unnoticed by Sutter. Sutter targeted [redacted] in particular. At least as far back as January of this year, Sutter began a concerted campaign to discredit [redacted] actions on behalf of the Union organizing campaign. On or around January 31, 2017, (b) (6), (b) (7)(C) [redacted] expressly told [redacted] RN (b) (6), (b) (7)(C) that Sutter management already knew all about [redacted] Union involvement. (See Confidential Witness Declaration of (b) (6), (b) (7)(C) dated June 20, 2017, at ¶¶ 3-4.) [redacted] went on to state that the Union paid [redacted] for [redacted] activities, an absolute falsehood and a clear attempt by management to actively discredit [redacted] and undermine the Union efforts more broadly. Sutter would later go on to claim that at the time of [redacted] termination and [redacted] and [redacted] disciplines, that management had no knowledge of the involvement of those disciplined in any union organizing campaign, a flat out lie given the testimony in [redacted] declaration.

With management becoming increasingly aware of the discontent in the [redacted] and of the nurses' discussions of unionization, newly appointed (b) (6), (b) (7)(C) announced a town hall event to be held in the unit on [redacted] 2017 to discuss concerns and attempt to quell the organized efforts of the nurses to improve working conditions and patient safety in the unit. At

the town hall meeting, with several layers of management in attendance, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) shared the nurses' collective concerns regarding an array of unsatisfactory working conditions. (See Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 4/21/17 ("(b) (6), (b) (7)(C), (b) (7)(D) Affd.") at pp. 9-12.) (b) (6), (b) (7 also voiced specific concerns about staffing ratios on the unit, the predominant ongoing and shared concern for nearly all of the (b) (6), (b) (7)(C) nurses. (See Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/3/17 ("(b) (6), (b) (7) Affd.") at pp.3-4.) (b) (6), (b) (7)(C) made several assurances that nurses would not be disciplined for speaking out and insisted that the nurses communicate concerns to their immediate supervisors to develop solutions following the town hall. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/1/17 ("(b) (6), (b) (7)(C), (Affd.") at pp.8-9.)

Following (b) (6), (b) (7)(C) direct instruction and with a good faith belief that their concerns might finally be heard, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and RN (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) immediately following the meeting to further discuss their concerns and ideas about improving working conditions. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) talked about a suggestion board for their Unit, nurse-to-patient ratios, and communication between nurses and their (b) (6), (b) (7)(C) The nurses and (b) (6), (b) (7)(C) were standing in a circle in the hallway outside the conference room used for the town hall, away from patients and working areas. Undoubtedly facing intense pressure from higher levels of Sutter management to control and contain the unionizing efforts of the (b) (6), (b) (7)(C) nurses while at the same time being tasked with addressing their concerns, (b) (6), (b) (7)(C) became upset and defensive when the conversation turned to things like unsafe nurse-to-patient ratios, something (b) (6), (b) (7)(C) acknowledged was a legitimate problem but not one (b) (6), (personally could control. ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at pp 12-13). Throughout the conversation, (b) (6), (b) (7)(C) repeatedly put (b) (6), (hand up and interrupted the nurses with rebuttals to nearly every concern raised. (b) (6), (b) (7)(C), (b) (7)(D) pointed out that this style of communication from management was ineffective, and reflected back to (b) (6), (b) (7)(C) (b) (6), (hand gesture in an effort to demonstrate how it inhibited constructive conversation. (b) (6), (b) (7)(C) was flustered by the remark and abruptly walked away from the conversation, down the hall yelling, "I'm only human." ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at 13; (b) (6), (b) (7 Affd. pp. 4-6; (b) (6), (b) (7)(C), (Affd. at p. 10; Confidential Witness declaration of (b) (6), (b) (7)(C) dated 7/10/17 pp. 1-2.).)

At no point did (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7 physically touch or restrain (b) (6), (b) (7)(C) nor did they intentionally intimidate or harass (b) (6), (b) (Id.) The nurses were all standing at comfortable, conversational distances from each other and (b) (6), (b) (7)(C) At one point, a transport isolette carriage was pushed through the same hallway, causing the group to temporarily stand closer together to make room ((b) (6), (b) (7 Affd., p. 6), but at no point during the conversation was (b) (6), (b) (7)(C) physically blocked from exiting the conversation. (b) (6), (b) (7)(C) abrupt and emotional exit from the conversation surprised and confused (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(and (b) (6), (b) (7)(C) given the mundane nature and tenor of the conversation.

(b) (6), (b) (7)(C), (b) (7)(D) was so taken aback by (b) (6), (b) (7)(C) outburst and unexpected departure from the conversation that (b) (6), (called after (b) (6), (b) telling (b) (6), (that (b) (6), (didn't mean to hurt (b) (6), (feelings. ((b) (6), (b) (7)(C), (b) (7)(D) Affd. at 13). After brief discussion with the other nurses present, (b) (6), (b) (7)(C), (b) (7)(D) attempted to find (b) (6), (b) (7)(C) to see what had happened and apologize if (b) (6), (had inadvertently offended (b) (6), (b) (6), (b) (7)(C), (b) (7)(D) made (b) (6), (way up to the 7th floor where (b) (6), (b) (7)(C) had gone, but before (b) (6), (b) (7)(C), (b) (7)(D) could

reach [redacted] another [redacted] stopped [redacted] and told [redacted] that [redacted] would not be allowed to speak to [redacted] began to cry [redacted] disappointed that [redacted] was so sensitive about an honest effort to breakthrough [redacted] off-putting communication style and concerned that, once again, no progress had been made on addressing the serious working condition concerns raised by the nurses. ([redacted] Affd., pp.13-14.)

The next day, [redacted] and [redacted] were each called in to speak with management separately. Management questioned the nurses about their conversation the day prior with [redacted] and handed each nurse paperwork informing them that they were being placed on unpaid leave pending an investigation into an absurd allegation of workplace violence. The nurses consistently denied that any aggressive behavior or misconduct took place and implored Sutter to review any and all surveillance footage from the day prior to clear their names. Sutter paid little mind to the accounts of these long-time RNs without any prior incidents of misconduct, let alone "violence." And in added insult, Sutter unlawfully prohibited the nurses from speaking with any of their colleagues about their unprecedented disciplinary investigation. In enforcing this unlawful policy, the Employer went so far as to interrogate and threaten an uninvolved nurse, [redacted] for discussing what [redacted] had heard of the disciplines with [redacted] coworkers. (See Confidential Witness declaration of [redacted] dated 5/11/17). Stunned at the egregious accusations, each of the nurses filed an unfair labor practice charge with the National Labor Relations Board ("NLRB"). Days later, Sutter terminated [redacted] and placed [redacted] and [redacted] on a corrective action plan equivalent to a last chance agreement.

The termination notice issued to [redacted] states that [redacted] engaged in "a serious violation of [the Employer's] Disruptive Behavior and Workplace Violence policy [and that] [d]ue to the serious nature of this incident, [redacted] employment is terminated effective today." (See Supplemental Confidential Witness Affidavit of [redacted] dated 5/4/17 ("Supp. [redacted] Affd."), Exhibit 1.) The version of the incident described in the termination notice is so completely at odds with the sworn affidavits of the three staff nurses who were accused of misconduct as to conjure images of an Orwellian universe where egregious distortion of facts passes for truth justifying the harshest imaginable consequences for those who simply speak their minds in an effort to have legitimate concerns addressed. The three nurses who were engaged in the conversation with [redacted] unequivocally deny that there was any physical touching or even a raised voice by anyone other than the [redacted] They also consistently deny that there was any effort to back the [redacted] up against a wall, or to prevent [redacted] from leaving the conversation at any time.

A fourth nurse who was also involved in the conversation, [redacted] additionally provided a sworn declaration that was included in the initial Board investigation describing what [redacted] observed about the incident that led to the disciplines and termination. (See Confidential Witness Declaration of [redacted] dated June 22, 2017.) [redacted] said that [redacted] approached the circle and made a lighthearted suggestion to conduct a pizza party. After listening to the conversation for a few minutes, [redacted] then walked about ten feet away to talk to two other nurses and relayed that, "[a]t no point did the conversation seem hostile or aggressive." [redacted] states that after a few minutes, one of the nurses [redacted] was talking to observed that the [redacted] was crying. [redacted]

then heard the [redacted] say, "It's not fair, it's not fair. I'm human too." [redacted] observed the [redacted] turn and walk away and heard [redacted] call to [redacted] to "come back." The [redacted] shouted, "I don't want to talk to you" in response. [redacted] was called by Human Resources office a few days later and questioned by phone about whether [redacted] had observed any aggressive behavior against the [redacted] by [redacted] or [redacted] after the town hall meeting. [redacted] said that [redacted] had not and described the incident "just as [[redacted] had] in this Declaration."

A fifth nurse, [redacted] provided new evidence in the form of a Confidential Witness Declaration on July 10, 2017, after the Region's decision to dismiss the Union's charge, swearing under penalty of perjury that [redacted] was in very close proximity to the conversation in question. **That new evidence is submitted hereto as Exhibit 1.** [redacted] states that while "the conversation seemed passionate," "[t]here was no yelling or touching going on and there was nothing about the conversation that [redacted] observed that made [redacted] concerned or worried." As [redacted] waited for a coworker near the ongoing conversation, [redacted] heard the [redacted] raise [redacted] voice, "but did not hear anyone else with a raised voice." [redacted] was not interviewed by Sutter prior to Sutter's decision to terminate [redacted] and issue serious discipline to [redacted] and [redacted] Notably, the Employer's attorney met with Nurse [redacted] on May 5 to ask [redacted] what [redacted] observed and [redacted] recounted precisely what is contained in [redacted] Declaration filed herewith. Sutter's attorney specifically asked [redacted] whether [redacted] observed any physical touching and whether [redacted] observed any conduct that would have made it difficult for the [redacted] to extricate [redacted] from the conversation and [redacted] answered both questions in the negative. At [redacted] request, [redacted] also recounted for [redacted] precisely who was present so that [redacted] could conduct a thorough investigation, though Sutter made no move to change its course of discipline upon hearing this additional exonerating evidence.

The Employer's Policy on Disruptive Behavior and Prevention of Workplace Violence is, on its face, designed to prevent violence defined in criminal statutes including "physical assault with or without a weapon, robbery, bomb threats, possession of a weapon, [and/or] a specific threat to hurt another person or property." (See Exhibit 5 to [redacted] Affd.at p. 2.) It also proscribes "disruptive behavior defined as "[a]ny incident in which the delivery of care or services is interrupted or impeded" and "threatening behavior, including [...] throwing or kicking objects, threatening to harm people directly or indirectly and intimidating actions, including: blocking pathway, leering, stalking." (Id.) There is no allegation of disruption of patient care and to the extent the disciplined and terminated nurses were accused of violent and/or threatening behavior, the evidence on that is, to say the least, disputed. Five registered nurses who were present for the incident deny under penalty of perjury that the nurses who were disciplined engaged in any threatening or inappropriate behavior. They admit that the [redacted] who was offended was clearly upset to the point of crying, but an emotional response on the part of the [redacted] does not mean that employees engaged in a dialogue intended to bring about constructive improvements in their working conditions acted inappropriately. The nurses involved adamantly dispute that the [redacted] was touched, or that [redacted] path was blocked.

Following the issuance of disciplines for [redacted] and [redacted] and termination of [redacted] the Union filed the charge in Case 20-CA-197833, alleging Section 8(a)(1), (3), and (4)

violations based on the unlawful disciplines and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(the maintenance and enforcement of an unlawful policy prohibiting employees from discussing workplace investigations, and the interrogation and threats made to (b) (6), (b) (7)(C) regarding the aforementioned policy.

The targeted discipline of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) was clearly retaliatory and a shameless, blatant affront on core Section 7 rights in an attempt to ruthlessly suppress collective organization. These nurses, with a combined 60 years at Sutter, all had spotless records and stellar evaluations. Their reputations in the hospital were all as exemplary nurses and compassionate advocates for the hospitals smallest, most vulnerable patients. Sutter's pernicious actions have sullied the reputations of these nurses and threatened their very livelihoods. The organizing campaign at the facility is also now under serious threat, as news quickly spread of (b) (6), (b) (7)(C) termination and (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) disciplines. (See Union position statement requesting Section 10(j) relief and accompanying evidence in the Regional Casefile.) The resounding sentiment from nurses at the hospital is that if Sutter could fire someone like (b) (6), (b) (7)(C) for (b) (6), (workplace advocacy and Union efforts, Sutter could fire *anyone*. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/11/17 at p. 6-7.) Attendance at Union meetings is down and continues to fall, known supporters are now afraid to speak publically about the Union or to make their support visibly known, and once-leaders in the campaign have scaled back their involvement for fear of retaliation. (See Confidential Witness Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) dated 5/31/17). Even worse, with the Region's move to dismiss these most serious affronts, nurses throughout the hospital now feel as though they have no recourse for even the most blatant retaliatory attacks and are therefore more frightened than ever to engage in what are supposed to be protected activities.

As described below, the Region erred in its partial dismissal of the charges outlined above. The impact this error has had on this crucial stage in the organizing campaign cannot be understated. It is imperative that this improper dismissal be reversed so that these nurses can be vindicated and the severe chill at the facility can be addressed.

Analysis

I. The Region Improperly Relied on the Employer's "Good Faith" Investigation

Where an employer has discharged or disciplined an employee because of alleged misconduct in the course of protected activity, the applicable standard for determining whether the disciplinary action(s) are unlawful is set forth in *NLRB v. Burnup & Sims. See Taylor Motors, Inc. & Am. Fed'n of Gov't Employees (Afge), Afl-Cio, Local 2022*, 365 NLRB No. 21 (2017).

The Union and charging nurses have consistently maintained that neither (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7) engaged in any misconduct that could warrant Employer discipline. While the Union acknowledges the Employer's stated reasons for discipline and termination, namely that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) acted "aggressively" toward (b) (6), (b) (7)(C) each of the involved nurses' sworn affidavits, in addition to the sworn declarations of witnesses (b) (6), (b) (7)(C) and (b) (6), (b) (7)(

(b) (6), (b) (7)(C)[1], directly refute the accounts put forward by Sutter. The Region, in making its determination, incorrectly placed emphasis on the Employer's "thorough" and supposedly "unbiased" investigation. This led the Region to conclude that whether or not misconduct actually occurred, the Employer had a reasonable belief that such misconduct occurred and as such was justified in its issuance of the disciplines and termination. However, this misguided standard of review is not supported by any applicable case law or accepted Board analysis.

It is clearly established that the alleged misconduct of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) occurred during the course of protected, concerted activity ("PCA"). To the Union's knowledge, the Employer has not disputed this fact[2] and regardless, the Region has acknowledged that the evidence clearly demonstrates that the alleged misconduct that was the basis of the disciplines and termination occurred during the course of recognized and undeniable PCA. As such, the Region should have first applied the appropriate *Burnup & Sims* analysis, which holds that an Employer violates section 8(a)(1) if it disciplines or discharges an employee for misconduct arising out of a protected activity when it can be shown that the misconduct never occurred. *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23, 85 S. Ct. 171, 172, 13 L. Ed. 2d 1 (1964) (citing *Mid-Continent Petroleum Corp.*, 54 NLRB 912, 932—934; *Standard Oil Co.*, 91 NLRB 783, 790—791; *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611.) Under the *Burnup & Sims* analysis, "8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct." *Ibid.*

Relevant to the atmosphere created at Sutter since the disciplines and termination of nurses engaged in what are supposed to be protected activities, the Court in *Burnup & Sims* explained the rationale for this rule as follows:

> The rule seems to us to be in conformity with the policy behind s 8(a)(1). Otherwise the protected activity would lose some of its immunity, since the example of employees who are discharged on false charges would or might have a deterrent effect on other employees. Union activity often engenders strong emotions and gives rise to active rumors. A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith. It is the tendency of those discharges to weaken or destroy the s 8(a)(1) right that is controlling.

Burnup & Sims, 379 U.S. 21, 23. As demonstrated in the affidavits provided by the Union,

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[1] The sworn declaration of (b) (6), (b) (7)(C) is attached hereto as Exhibit 1. (b) (6), (b) (7)(C) declaration was not procured during the initial investigation because the Region insisted that it did not need any additional evidence to support the charges during the investigatory stage.

[2] It is worth noting that even if the Employer were to claim that it was unaware that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) were engaged in PCA, such lack of knowledge would not affect the *Burnup & Sims* analysis. See, e.g., *NLRB v. Ideal Dyeing & Finishing Co.*, 956 F.2d 1167 (9th Cir. 1992) (holding that Employer was liable for discharging employee during the course of PCA even if the Employer was unaware that employee was engaged in PCA at the time).

particularly from (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) there has already been such a deterrent effect on other employees. This is doubly so since the Region improperly dismissed the charges related to disciplines and termination for engaging in Section 7 activity.

The appropriate *Burnup & Sims* analysis makes clear that an Employer's investigation and findings, even if "thorough," "unbiased," and in good faith, in no way shields the Employer from a finding of a violation of the Act. "[T]he employer's good faith is simply not relevant if the misconduct did not occur." *Shamrock Foods Co. v. NLRB*, 346 F.3d 1130 (2003). Further, "*Burnup* requires no showing of the employer's anti-union hostility for the commission of an unfair labor practice." *Webco Indus., Inc. v. N.L.R.B.*, 217 F.3d 1306, 1313 (10th Cir. 2000). The Region, in express communication with the Union regarding its reasoning for partial dismissal, made clear that the focus of the decision was not on the Region's own investigation into the underlying facts regarding the alleged misconduct, but rather on its analysis of the Employer's investigation, concluding that the because the Employer's investigation appeared to be "thorough" and "unbiased," the Employer could not be found to be in violation of the Act. This disturbing analysis completely subverts the long-standing and applicable standards set forth in *Burnup & Sims* and its related progeny. The Region's analysis as explained to the Union when soliciting withdrawals of the allegations now on appeal, in essence erroneously morphs *Burnup & Sims* with *Wright Line*. Accepting for a moment the Region's conclusion that the Employer's investigation was thorough and unbiased, which as described in greater detail in Section IV below is wholly unsupported, the Region should still have then conducted its own independent investigation, taking voluntary affidavits and subpoenaing affidavit testimony where necessary, and examining the evidence produced to make a determination regarding whether the alleged misconduct did in fact occur. To the extent the Region may have done so and made credibility determinations that the misconduct did in fact occur, it erred, and the Regional Director should have issued complaint, leaving it to an administrative law judge to resolve credibility disputes.

Even if the Region were convinced through its own independent investigation, separate and apart from the Employer's allegedly "good faith" investigation, that some misconduct did occur on the part of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) in applying the appropriate *Burnup & Sims* analysis, the Region should then have assessed whether that misconduct was so serious as to lose protection of the Act. Before an administrative law judge, General Counsel would be tasked with showing that *either* the misconduct did not occur *or* that it was not serious enough to forfeit the protection of the Act and to warrant the discipline imposed. *Consolidated Communications, Inc. v. NLRB*, 837 F.3d 1, 8 (D.C. Cir. 2016) (emphasis added). In assessing whether such alleged misconduct might be serious enough to lose protection of the Act, the analysis should then, and only then, turn to the four-factor test laid out in *Atlantic Steel Co.*, 245 NLRB 814 (1979). *See King Soopers, Inc. v. NLRB*, 859 F.3d 23 (D.C. Cir. 2017) (holding that the NLRB properly applied the *Atlantic Steel* factors in determining level of misconduct within the appropriate framework of *Burnup & Sims*).

In determining whether misconduct occurred, and if so, whether that misconduct was serious enough to forfeit the protection of the Act and to warrant the discipline imposed, the Region is obliged to rely on its own investigations, including affidavits, statements, and other

evidence therein. The Region expressly acknowledged to the Union that its investigation did not disclose any objective evidence to refute the sworn testimony of those nurses directly involved in the alleged "incident" who consistently stated that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7) in no way acted inappropriately. Rather, the Region expressed that the evidence produced created a "he said, she said" scenario, where the consistent testimony of the nurses directly involved, including (b) (6), (b) (7)(C) who was part of the conversation but was not disciplined, was contradicted by the reports in the Employer's investigation and potentially by affidavit testimony of other Employer-provided witnesses. As explained below, in such a scenario with a clash of testimonies and the case therefore turning primarily on credibility resolutions, such resolutions must necessarily be resolved by a trier of fact, not in the preliminary Board investigatory process. *See, e.g.*, *Shamrock Foods Co.*, 346 F.3d at 1133.

II. Absent Objective Evidence, All Credibility Determinations Should Be Made by the Trier of Fact

It is well established that credibility determinations are reserved for the trier of fact. The ULP Casehandling Manual, Section 10064 and GC Memorandum 09-06 assert that Regional Offices are only to resolve conflicting factual accounts of witness testimony when objective compelling documentary evidence exists to support such a finding:

> Regional Offices are expected to resolve factual conflicts only on the basis of compelling documentary evidence and/or an objective analysis of the inherent probabilities in light of the totality of the relevant evidence… If, after applying the principles set forth above, the Regional Office is unable to resolve credibility conflicts *on the basis of objective evidence* regarding matters which would affect the Regional Office's merit determination, a complaint should issue, absent settlement.

NRLB Casehandling Manual Part 1: Unfair Labor Practice Proceedings, Section 10064 (emphasis added).

In the handling of the investigation and making its merit determinations, the Region stopped short of following the guidance of the Casehandling Manual and the General Counsel Memo in several important regards. First and foremost, according to both Field Examiner and Field Examiner Supervisor handling the investigation, the Region decided to give more weight to the testimony of witnesses proffered by the Employer by deeming them "neutral." In their explanation, they insisted that those witnesses not directly involved in the conversation in question were somehow more "neutral" than those who were involved in the conversation. The labeling of some witnesses as more "neutral" than others is in-and-of itself a credibility determination inappropriately assigned by the Region in this investigatory stage. Further, even following that flawed logic, the Region ignored the fact that there were additional witnesses who were not directly involved in the conversation and who could have provided affidavits. The Region improperly concluded that those additional witnesses need not be pursued because it had already incorrectly determined that the Employer's investigation alone was unbiased and thorough and therefore no violation could have occurred. Through this reasoning the Region concluded that irrespective of the PCA and union activity that the Employer would have taken the same actions, mistakenly morphing its analysis with *Wright Line*.

(b) (6), (b) (7)(C) a RN witness to the "incident," was mentioned in numerous affidavits and was interviewed by Sutter HR by phone (though [redacted] was never presented with a statement to review). Faced with an admitted "[redacted] said, [redacted] said" scenario, the Region did not think it necessary to take an affidavit from [redacted] Despite repeated queries by CNA, the Region assured the Union that it did not need any more evidence. Because the Agenda was imminent and the schedules of [redacted] and the investigating Board Agent conflicted, CNA provided the Region with an unsolicited declaration, in which [redacted] states that [redacted] did not witness any threats, physical violence or hostile behavior. The Region, however, made yet another improper credibility determination of [redacted] provided testimony. The Region deemed [redacted] to be a "non-neutral" witness because [redacted] at one point engaged in the conversation with [redacted] even though [redacted] stepped away from the conversation and was standing nearby when the alleged misconduct occurred, and because [redacted] is "[redacted]" with [redacted] Firstly, as mentioned above, this type of credibility determination by field investigators at this stage in the NLRB process is wholly inappropriate and flies in the face of long-established procedural guidelines, board decisions, and case law. "[A]dministratively resolving credibility conflicts [should] only [take place] where documentary or other objective evidence is the basis for doing so. If such evidence is not available, the issue of credibility is best resolved through a formal hearing where the testimony of witnesses is subject to crossexamination." GC Memorandum (March 5, 1976). Secondly, if anything, the Region should have afforded [redacted] testimony the most weight, given [redacted] vulnerable position as a current employee testifying adversely to [redacted] employer. *See, e.g., Formed Tubes, Alabama*, 211 NLRB 509, 511 (1974) (holding that the testimony of those employees who were in the vulnerable position as current employees testifying adversely to their employer was entitled to added support).

RN [redacted] is another witness to the conversation in question from whom the Region did not pursue testimony, even though [redacted] meets the Region's arbitrary standard of a "neutral" witness. [redacted] was not directly involved in the conversation between [redacted] and [redacted] However, [redacted] did walk down the hallway passing them in conversation. In fact, [redacted] was walking with RN [redacted] an RN who was directly interviewed by the Employer in the course of their investigation. As discussed in greater detail below, the Employer did not bother to interview [redacted] until well after the decision was made to terminate [redacted] and seriously discipline [redacted] and [redacted] Perhaps more disturbingly, however, is that the Region did not deem it necessary to speak with [redacted] as part of their investigation, either. The Region never asked the Union for [redacted] contact information, to help facilitate a voluntary affidavit, nor did the Region seek to subpoena [redacted] for [redacted] testimony. The Union continued to pursue all potential relevant evidence despite the Region's assertion that no further evidence was required for determinations on the allegations. After the Region's partial dismissal, the Union was able to secure a sworn declaration from [redacted] attached hereto as Exhibit 1. [redacted] like nearly every other witness to the "incident," confirmed that [redacted] did not witness any aggressive or worrisome behavior on the part of [redacted] or [redacted] did not hear [redacted] or [redacted] raise their voices, [redacted] did not see them in any way restrain [redacted] from exiting the conversation, and [redacted] did not witness any kind of behavior that could be considered aggressive or cause for concern.

Additionally, [redacted] was with [redacted] both before and after the incident, and [redacted] did not express concern about any unprofessional behavior on the part of [redacted] or [redacted]

The sheer fact that the Region decided that any witnesses were somehow more neutral than others is itself a credibility determination reserved for the trier of fact. There is no objective evidence present in this case, such as video surveillance footage, that would permit the Region to resolve a credibility conflict in the case of conflicting testimony, whether through affidavit or in the Employer's own internal investigation. Nevertheless, the Region did just that. Furthermore, contrary to the GC Memo 09-06, the Region does not appear to have weighted the severity of both the allegations and the severity of the consequences in deeming a resolution to the credibility conflict by an ALJ unnecessary. Here the Employer alleged something quite serious, i.e. workplace violence on the part of an RN against [redacted]. Such an allegation could endanger an RN's licensure and hence [redacted] livelihood. This fact should weigh in favor of issuance of complaint. However, the Region implicitly concluded that the investigation of a union-busting, ULP-committing hospital was thorough and unbiased, and the subordinate witness RNs who provided testimony favorable to Sutter were uncoerced. Despite the fact that such a good faith investigation determination is irrelevant in a *Burnup & Sims* analysis, the Region misapplied the standard of the case it did apply.

Under an *Atlantic Steel* analysis, which the Region did undertake, the standard does not make room for a "good faith" determination about an employer's investigation, but rather rests on an objective analysis of the facts of the alleged incident. Or as phrased in GC Memo 09-06, "an objective analysis of the inherent probabilities in light of the totality of the relevant evidence." Upon examination, the inherent probabilities in light of the totality of the relevant evidence should point decidedly towards the credibility of the RNs involved, sufficient for resolution by an ALJ to reach upon issuance of complaint.

A review of the totality of the relevant evidence shows this to be so: the incident took place between 3 RNs with a total of 60 years of combined experience at Sutter, each with spotless records and glowing evaluations from Sutter. All 3 RNs had been engaged in PCA with the highest levels of hospital management only minutes before. They were at the time of the incident engaged in PCA concerning the same long-standing and important working-condition issue that had largely been the impetus behind the organizing campaign, i.e. nurse-to-patient ratios and the Employer's continual violation of the law in that regard. The RNs, again only minutes earlier, had been instructed by the [redacted] of the hospital to discuss with their supervisors the issues, including ratios, they had raised in the town hall. [redacted] was told by numerous other nurses that Sutter was aware of [redacted] organizing efforts on behalf of the Union. Sutter management spoke directly with [redacted] colleagues, such as RN [redacted] about Sutter's knowledge of [redacted] Union involvement and attempted to dissuade nurses from following [redacted] unionization efforts by lying about [redacted] role in the Union. [redacted] department, the [redacted], was one of the strongest areas of support for the Union in the hospital. Sutter denied its knowledge of [redacted] Union involvement, which was a proven lie.

Reviewing the evidence and the totality of the circumstances, which scenario would an

objective analysis project in probabilistic terms? That a (b) (6), (b) (7)(C) RN leader with numerous character witnesses lined up behind [redacted] advocating for issues of concern to all nurses in the [redacted] and indiscreetly organizing for union representation would assault and threaten a (b) (6), (b) (7)(C) in public thereby endangering [redacted] career and the campaign? Or that a hospital chain, which has fought tooth-and-nail every organizing campaign CNA has engaged in at its hospitals would do whatever it takes to prevent its flagship campus from unionizing, up to and including taking advantage of a situation where an [redacted] became unreasonably emotional during a conversation to terminate a known nurse leader to chill the campaign, knowing from experience that even if a ULP complaint were to issue, the only consequence would be reinstatement. An objective analysis of the totality of evidence and circumstances should lead to the issuance of complaint to allow a trier of fact to make credibility determinations based on witness testimony and demeanor under oath and with the opportunity for cross examination.

The Union cannot stress strongly enough that by all appearances, the Region has made a two-fold credibility determination in the absence of any objective, non-circumstantial evidence. First it determined the Employer's witnesses were more "neutral" than the Charging Parties' witnesses. Second, it then determined that those witnesses' testimonies and the Employer-conducted investigation was more credible than 4 RNs with approximately 70 years of combined experience at Sutter, all with spotless disciplinary records and stellar evaluations. As CNA emphasized in its June 6 position statement for 10(j) injunctive relief, this is a classic nip-in-the-bud termination of a union activist leader, and discipline of other supporters, during the groundswell of an organizing campaign[3]. Coupled with the fact that the nurses were engaged at the time of the incident in hallmark PCA, it is clear that the Region should have put this before an ALJ rather than dismiss these very serious charges in deference to an in-house employer investigation.

The standard of the Board in this regard clearly weighs in favor of such credibility resolutions being made by the trier of fact:

> The Board in *Union Carbide Building Co.*, 276 NLRB 1410 (1985), quoted approvingly the language of Administrative Law Judge Joan Weider, in regarding a possible standard for measuring the General Counsel's obligations in this respect. The judge found that the credibility issues "were not of such patent clarity as to be readily susceptible of resolution without resort to the crucible like testing of an evidentiary hearing. None of the key witnesses was shown to be patently or obviously incredible prior to the issuance of

[3] It is worth noting that despite the Union's repeated emphasis of the severity of these disciplines and termination and the devastating impact on the organizing campaign, [redacted] related to the Union that in the Field Examiner's call to [redacted] regarding dismissal of [redacted] charge, [redacted] implored the Field Examiner to reconsider given the ruinous impact this decision would have on the organizing campaign. The Field Examiner casually responded that [redacted] could always appeal if [redacted] disagreed with the decision. When [redacted] pushed back that the tremendous chill created by these unlawful acts coupled with this unjust dismissal could kill the organizing campaign altogether before a decision on appeal might ever come through, the Field Examiner responded, "Huh, I hadn't thought of that." This callous disregard for the seriousness of the charges and the intensified chill on the organizing campaign again reveals the inadequacies of the Region's investigation and the error of the decision to partially dismiss these allegations.

> complaint." Id. at 1412. The Board, as noted, quoted Judge Weider's language in affirming her decision that the General Counsel's position was substantially justified.

Supershade Corp. 280 NLRB 1213, 1214 (1986).

Here it is appropriate as suggested by *Union Carbide*, to analyze whether the credibility issues presented herein were "of such patent clarity" as to be readily susceptible of resolution without a hearing. The Region should clearly have found that they were not. As such, the Region should have issued complaint so that credibility determinations could have properly been made based on testimonial evidence of live witnesses before an administrative law judge who would have the opportunity to observe their demeanor and thus properly make appropriate credibility resolutions. *See Webco Indus., Inc. v. NLRB*, 217 F.3d 1306, 1315 (10th Cir. 2000) (citing *Eastern Eng'g & Elevator Co. v. NLRB,* 637 F.2d 191, 197 (3d Cir.1980)).

III. Under *Atlantic Steel* Analysis, the Action of RNs were Not So Opprobrious as to Lose Protection Under the Act

As explained above, it is undisputed that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were engaged in PCA in their discussion with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) that led to their discipline. That communication was wholly about improving communication with management and addressing key workplace issues, including nurse-to-patient ratios that have been a key underpinning of the (b) (6), (b) (7)(C) nurses' concerns with working conditions. Even if the Region concluded that it could not establish that no misconduct took place, it should then ask whether the misconduct was so egregious as to forfeit the protection of the Act under the four-factor test set forth in *Atlantic Steel*.

Indeed, Sutter surely argued that, although engaged in obvious PCA, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) lost protection under the Act by their allegedly pejorative conduct. As General Counsel is well aware, in *Atlantic Steel*, the Board established a four-factor test to determine whether employee misconduct that occurs during the course of otherwise protected activity is so opprobrious as to lose protection under the Act. 245 NLRB 814, 816 (1979). The four factors are: 1) the place of the discussion; 2) the subject matter of the discussion; 3) the nature of the employees' outburst; and 4) whether the outburst was provoked by the employer's unfair labor practice. *Ibid. Atlantic Steel* also contemplates the employee's past record. *Id.* at 817.

In the instant case, the conduct of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) cannot be construed, even under the most negative interpretation of their actions, as so opprobrious as to lose protection under the Act. To the first factor, where remarks are made in a work area in front of other employees, such facts would weigh against finding that the statements and/or conduct were protected by the Act. *See, e.g., Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 32 (D.C. Cir. 2011). In the instant case, the nurses were in a hospital hallway during the conversation in question. The hallway was not a patient care area of the hospital where typical RN work takes place. While the hallway was accessible to other employees at the time, according to all affidavit and declaration testimony, there were only three other hospital employees apart from those directly engaged in the conversation who were in the hallway long enough to witness the

conversation and potentially be affected ([redacted] RN [redacted] and RN [redacted][4]. The Employer cannot demonstrate that there was a disruption in work, as most if not all of the nurses involved or witnessing were off-duty (namely, [redacted], and [redacted]). At one point during the conversation, three on-duty employees pushing an isolette carriage passed by, but were undisrupted by the nurses' conversation with [redacted] further evidencing the lack of impact on work conditions. Additionally, the conversation took place directly following the Employer-called town hall meeting and [redacted] and [redacted] were following express direction from the hospital [redacted] to discuss working conditions with their supervisor following the town hall. Rather than demonstrate that the Employer had lost the ability to control its workforce, the RNs were doing as instructed by the highest levels of hospital management. Finally, any potential de minimis disruption the conversation did have was short-lived, lasting only minutes. The brevity of the conversation and any alleged disruption weighs in favor of protection under the Act. *See, e.g., Caterpillar Logistics, Inc. v. Nat'l Labor Relations Bd.*, 835 F.3d 536, 547 (6th Cir. 2016) (upholding ALJ application of *Atlantic Steel* analysis where ALJ found the fact that employee disrupted work for a very brief period of time weighed in favor of finding protection under the Act in the first factor of the *Atlantic Steel* test.)

To the second factor, the subject matter of the discussion was entirely related to concerted attempts to improve working conditions, namely communication with management and nurse-to-patient ratios and nurse-to-supervisor communications. Again, this is not an issue in contention and this factor weighs heavily in favor of finding that the statements and/or conduct of the nurses should be protected by the Act.

To the third and fourth factor, here, according to five witnesses ([redacted] and [redacted] there was no outburst from [redacted] or [redacted] The only outburst, in fact, came directly from [redacted] who ultimately became emotional, yelled at the nurses, and stormed away. The Employer's termination and discipline notices assert that [redacted] and [redacted] were acting aggressively and that [redacted] physically touched [redacted] body. However, nearly every witness beside [redacted] has stated that there was no aggressive behavior or statements from [redacted] or [redacted] and the Employer has no surveillance footage from the date and place in question that could objectively resolve the clash of testimonies.

Assuming that, at worst, [redacted] and/or [redacted] made some intimidating or aggressive statements, which they did not, such statements, in light of the surrounding circumstances, would still not cause [redacted] or [redacted] to lose protection under the Act. *See, i.e., In Re Kiewit Power*, 652 F.3d 22 (2011) (D.C. Circuit upholding NLRB decision finding that employees angry statements, "it was going to get ugly" and that their manager "better bring [his] boxing gloves," were not cause for the employees to lose the Act's protection). There has been no testimony to suggest that [redacted], or [redacted] made any threatening statements, as the entirety of their conversation was based in resolving workplace

[4] To the extent the Employer claims any other employees witnessed an allegedly disruptive conversation between [redacted] and [redacted] such a claim would be in direct contradiction to the sworn affidavits and declarations of every other witness involved, and as such any such claim would necessarily require credibility determinations made by a trier of fact.

issues. Furthermore, those comments the nurses' did make to [redacted] while not provoked by a ULP, were in direct response to their shared frustration over unsatisfactory working conditions. *See Metro-W. Ambulance Serve., Inc. & Teamsters Joint Council #37, Int'l Bhd. Of Teamsters and Teamsters Local #223, Int'l Bhd. Of Teamsters*, 360 NLRB 1029, 1049 (2015) (finding that fourth factor of *Atlantic Steel* analysis weighed in favor of finding protection of the Act where employee's remarks were not provoked by an unfair labor practice, but were provoked by employee's frustration, shared by others, over a term or condition of employment). It is clear that under the *Atlantic Steel* test, [redacted] and [redacted] retain their protection under the Act.

Because no threatening statements were made, the Employer resorted to claiming that [redacted] and [redacted] were standing aggressively close to [redacted] in a way that restrained [redacted] from exiting the conversation and that [redacted] stomach was touching [redacted] Under the analysis set forth in *LaGuardia,* the Board held that three employees who *deliberately* and excessively touched their supervisor with an *effort to restrain him* as a means of presenting him with an employee-signed petition forfeited protection under the Act. *Laguardia Assoc., LLP*, 357 NLRB at 1101 (emphasis added). There, one employee deliberately grabbed the supervisor's shoulder to prevent him from leaving and reached around his waist with the petition; another employee pushed her chest against the supervisor and moved from side to side, deliberately blocking his exit; a third employee deliberately grabbed the supervisor's arm to restrain him from fleeing. *Id.* at 1098. The Board held that such deliberate physical contact "reasonably threatened [the supervisor] and the Respondent's ability to maintain workplace order and discipline." *Id.* at 1101. However, a fourth employee did not forfeit PCA for touching a security guard's wrist as the guard waved his arms to clear a path for the supervisor. *Ibid.* Because the fourth employee did not deliberately touch the security guard with any direct intention to restrain him, her conduct was materially different from the other three employees, and therefore her conduct was protected under the Act. *Ibid.* Therefore the Employer violated 8(a)(1) in bringing discipline against her. *Ibid.*

The Region apparently determined that [redacted] made some physical contact with [redacted] and that [redacted] and [redacted] though never physically touching [redacted] were standing so close so as to block [redacted] from exiting the conversation. This determination in and of itself is problematic, as such a determination, as stated prior, should require a credibility determination before a trier of fact given the clashes in testimony around this issue. This error is compounded by the fact that the Region has uncovered no evidence in its investigation that would support the accusation that [redacted] or [redacted] *deliberately* threatened or made contact with [redacted] so as to lost protection of the Act as set forth in *Laguardia*. Witnesses outside the conversation would have no way of knowing what [redacted], [redacted], or [redacted] intentions were with their actions. Further, the direct affidavit testimony of [redacted] and [redacted] makes abundantly clear that they in no way intended to intimidate [redacted] or block [redacted] from exiting the conversation. Indeed, [redacted] did ultimately walk away from the conversation. Additionally, text messages sent by [redacted] to [redacted] immediately after [redacted] exited the conversation reveal [redacted] contemporaneous state of mind, which is to say that far from intending to threaten or touch [redacted] [redacted] actually felt terrible that [redacted] may have misinterpreted what [redacted] was saying or in any way made [redacted] feel upset. **These text messages**

constituting new evidence are submitted hereto as Exhibit 2. On the basis of all available evidence, neither [redacted] nor [redacted] made any deliberate threats or physical contact with [redacted] and therefore under the standards set forth for physical contact under *Laguardia*, even if the nurses did make some physical contact with [redacted] which they did not, they still should not have lost protection under the Act.

In the present case, under no plausible interpretation could the conduct of RNs [redacted] or [redacted] be reasonably seen as threatening [redacted] and/or Sutter's ability to maintain workplace order and discipline. [redacted] **did not** deliberately touch [redacted] with an effort to restrain [redacted] *Even if* [redacted] incidentally contacted [redacted] during their discussion, for example because they were squeezed up against the wall by a passing isolette pushed by 3 people, such conduct is not sufficient to forfeit protection of the Act. *Laguardia*, 357 NLRB at 1101. Sutter nonetheless speciously claims that [redacted] aggressively touched [redacted] in an intimidating and threatening manner and that [redacted] physically surrounded [redacted] and blocked [redacted] from walking away. However, this claim is not supported by any facts, even as laid out by the Employer, as [redacted] did freely walk away from the conversation when [redacted] became emotionally agitated in response to the nurses' communications about unsatisfactory working conditions, including ineffective management communication. With regard to these facts, Sutter could not have presented evidence as a result of its sham investigation demonstrating that [redacted] alleged actions were deliberate. Nor could Sutter have shown that [redacted] or [redacted] made a deliberate effort to physically restrain [redacted] The witnesses who maintain that the nurses were not verbally or physically aggressive toward [redacted] clearly outnumber those put forth by Sutter claiming otherwise[5]. Further, Sutter fails to demonstrate the "particularized proof that specific individuals engaged in the misconduct at issue." *Id.* at 1100.

Finally, even if there was sufficient evidence to demonstrate that some severe misconduct did occur that was so great as to lost protection under the Act, which there is not, even the grossest interpretation of actions would not warrant the level of discipline assigned. Again, to maintain protection under the Act, the evidence need only demonstrate that *either* the misconduct did not occur *or* that it was not serious enough to forfeit the protection of the Act *and to warrant the discipline imposed. Consolidated Communications*, 837 F.3d 1, 8 (D.C. Cir. 2016) (emphasis added). RN [redacted] an employee of Sutter since [redacted], in a sworn declaration provided on July 7, 2017 and attached here as **Exhibit 3**, echoed the sentiments of nurses throughout the hospital shocked by the unprecedented level of discipline inflicted on [redacted] and [redacted] The only past incident of alleged workplace violence that [redacted] could recall took place between two [redacted]. In that incident, there was physical contact in a

[5] The Union bases this calculation on available affiant and declarant testimony and from communications with the Region regarding the charge. However it is worth noting that even if the Employer did provide more supposed witnesses alleging that serious misconduct occurred, a greater number of witnesses on one side of an issue is but one, non-controlling factor in assessing a case. *See, e.g., Abbott Labs v. NLRB*, 540 F.2d 662, 667 (4th Cir. 1976)(credibility not determined by a mere "head count"); accord: NLRB v. Union Carbide Caribe, Inc. 423 F.2d 231, 233 (1st Cir. 1970); *George C. Foss Co.*, 270 NLRB 232, 237 (1984) (credibility not determined by the number of witnesses but rather by their trustworthiness); *Salt River Valley Water Users' Ass'n*, 262 NLRB 970, 974 fn. 10 (1982)(credibility determinations are not based on numbers, but rather upon demeanor and logic of probability).

public hallway of the hospital to the level of [redacted] punching the [redacted] and making threats about future physical harm. Upon learning of this incident, HR did not immediately place both employees on administrative leave to conduct an investigation. Nor did HR terminate or place either of the employees on a last chance agreement. Rather, HR's initial response was to do nothing. Only when prompted by other concerned employees did HR begrudgingly suspend each employee for a couple of days (one such suspension took place while the employee was already on vacation). Both [redacted] involved in the physical altercation remain employed at Sutter to date. HR followed this same casual approach to workplace violence just one year ago when a Sutter RN complained of sexual harassment from another coworker. Sutter did not place the harasser on leave pending an investigation, nor did Sutter terminate or even suspend the harasser. Instead, HR had a meeting with the employee accused of sexual harassment, with [redacted] sitting in as witness. In the meeting, HR instructed the harasser to cease engaging inappropriately with the RN. However, when the harasser continued [redacted] misconduct after the meeting, HR refused to take any further action. These responses to other incidents and types of workplace violence make apparent that even if [redacted] and [redacted] engaged in misconduct as the Employer has claimed, their actions would still not warrant the level of discipline received.

It is clear that Sutter seized on [redacted] emotional state to take unprecedented action by disciplining and terminating known Union leaders and outspoken advocates for the improvement of [redacted] RN working conditions, striking its most ferocious blow in an ongoing busting campaign of lies, threats, and intimidation. It bears stressing that even if [redacted] bizarrely felt threatened by this "incident," even assuming there was any inadvertent physical contact, [redacted] own subjective emotional response is not the standard laid out by the Board in *Atlantic Steel*. *See Lana Blackwell Trucking, LLC*, 342 NLRB 1059, 1062 (2004) (Remarks did not lose protection even though the manager subjectively believed that the employee was rude, disrespectful and embarrassed her in front of other employees); *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB No. 12, slip op. at 5 (2014) (employee's Section 7 activity does not lose protection merely because it makes fellow employee uncomfortable) (citing *Frazier Industrial Co.*, 328 NLRB 717, 719 (1999), enfd. 213 F.3d 750 (D.C. Cir. 2000)); *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000) ("[l]egitimate managerial concerns to prevent harassment do not justify discipline on the basis of the subjective reactions of others to [employees'] protected activity"). Objectively, with all the facts considered, there is no way that a reasonable person would have felt threatened by the conduct of [redacted] or [redacted] *See Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 29 fn. 2 (D.C. Cir. 2011), enfg. 355 NLRB 708 (2010).

Accordingly, after the Region did not apply *Burnup & Sims* and mistakenly concluded that misconduct had taken place based largely on the Employer's own investigation, it misapplied the *Atlantic Steel* doctrine, in reasoning in light of all the objective evidence that [redacted] and [redacted] conduct was so opprobrious as to lose the protection of the Act. Rather, the Region should have found that it had sufficient evidence to find that the Employer violated the Act by disciplining the nurses for the very protected concerted activity in which [redacted] and [redacted] were immediately engaged.

IV. Even If Reliance on the Employer's Investigation Could Be Determinative of the Region's Merit Findings, the Evidence Demonstrates that the Employer's Investigation Was Flawed

As emphasized above, the good faith process or findings of Sutter's investigation is irrelevant to whether a ULP was committed. The only bearing it has is whether the burden shifts back to the General Counsel under the *Burnup & Sims* analysis. Even so, since the Region improperly put such emphasis on the nature of the Employer's investigation, it bears addressing. Firstly, the Employer's investigation was not an unaltered collection of witness statements regarding the event. (b) (6), (b) (7)(C) a former (b) (6), (b) (7)(C) familiar with the HR process of investigation of misconduct, stated that when Sutter HR interviews employees as part of an investigation, the employee is not entitled to write a statement in their own words. Instead, HR records witness accounts according to HR's own impression and interpretation of what a witness says. This was confirmed by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who when cursorily interviewed by HR as part of Sutter's "investigation," were never provided a statement to sign reflecting their actual recollection of events or afforded the opportunity to review the notes taken by HR regarding their respective accouts. (b) (6), (b) (7)(C) also did not recollect signing any statement after (b) (6), (b was interviewed by Sutter's attorney. As such, all of the accounts in Sutter's supposedly unbiased investigation did not come directly from witnesses but instead were third-hand accounts from Sutter itself.

Another central flaw with the Region's contention that it found the Employer conducted a good faith investigation is that it relies on hearsay evidence to reach this conclusion. Based on all the affidavit and declarant testimony to which the Union has access, there were a total of eleven potential witnesses to this incident, including (b) (6), (b) (7)(C) and the RNs who were disciplined. Three potential witnesses were passers-by pushing an isolette, and neither Sutter nor the Region spoke with them. Two others, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) both provided declarations because the Region failed to contact non-Sutter provided, third-party witness. (b) (6), (b) (7)(C) provided a phone statement to the Employer, and was asked whether (b) (6), (b saw any hostile behavior on the part of (b) (6), (b) (7)(C) When (b) (6), (b said (b) (6), (b did not, the Employer never followed up with (b) (6), (b to provide a statement. (b) (6), (b) (7)(C) who also did not witness any of the behavior alleged by Sutter, was not contacted until after (b) (6), (b) (7)(C) was terminated and (b) (6), (b) (7)(C) and (b) (6), (b) (7) were disciplined, as mentioned above and described in greater detail below. This leaves only RNs (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) CNA assumes that the Region took affidavits from these RNs, and that these affidavits form the basis of the Region's conclusion that the Employer's investigation was fair and thorough, though it was far from it. To the extent Sutter relied on any other person's testimony to reach its pre-determined conclusions, any such individuals would inherently be limited to providing hearsay evidence relating what their impressions were either before or after the alleged misconduct occurred, as they would not be percipient witnesses to the "incident."

The Region egregiously decided that in an environment where (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) had already spoken out several times against CNA and unionization, that likely anti-union nurses put forward by the Employer were somehow neutral observers and therefore to be credited over the testimony of four RNs who stated that no misconduct took place (and since the Region's

dismissal, a fifth witness, [redacted] has come forward again corroborating that no misconduct took place). Based on conversations with the Region, it appears that the affidavits of [redacted] and [redacted] merely corroborated the investigation that the Employer provided. [redacted] has since admitted to a coworker that HR asked [redacted] the same questions over and over in their interview with [redacted] further confessed, as recently as July 12, 2017, to another coworker that [redacted] feels terrible about [redacted] termination and that [redacted] never saw [redacted] touching [redacted] Understandably, especially after the Region made the egregious error to dismiss these charges thereby supporting [redacted] termination, [redacted] coworkers have been unable to convince [redacted] to provide a statement stating as such, given the risk of unremedied retaliation, up to and including termination. The nurses with whom [redacted] has spoken are equally fearful of providing statements for fear of becoming "the next [redacted]" This makes at least three individuals who have refused to participate in the investigation or pulled out at the last minute out of fear of reprisal. Sutter's retaliation against [redacted] and [redacted] is already having its intended chilling effect, not only with regard to the organizing campaign, but participation in NLRB processes.

It strains credulity that the Employer simultaneously conducted a thorough and unbiased investigation while at the same time violating employees' Section 7 rights by preventing them from discussing the investigation and harassing them when found to have been so doing. The Region found merit to these allegations in its investigation, underscoring the Region's acknowledgement of the Employer's proclivity for unlawful conduct. The simultaneous commission of acknowledged ULPs undermines the Employer's credibility and should have been a factor in determining the Employer's undeniable bias in crafting its own internal investigation.

Though Sutter unsurprisingly claims that it did not set out to terminate [redacted] the Region has no reason to rely on the Employer's word. As mentioned, Sutter maintained that it had no knowledge of [redacted] union activity. However, the declaration of [redacted] completely refutes this outright lie, whereby [redacted] the [redacted], confirmed Sutter's knowledge of [redacted] union activities back in January of this year. During the course of that conversation, [redacted] interrogated [redacted] regarding soliciting on behalf of the Union, and when [redacted] volunteered that [redacted] was supporting the unionization efforts, [redacted] stated that Sutter was already aware of that fact, and then promulgated the fabrication that [redacted] is being paid for [redacted] efforts in support of the Union. If the Employer did not set out to retaliate against [redacted] for engaging in protected activity, why did it lie to the Region about its knowledge of such activity?

The assertion that Sutter's investigation was "thorough" is equally unsupported. Sutter did not interview all witnesses to the alleged incident and, as mentioned above, did not take statements from those witnesses it did interview. In fact, only after the Union filed its own charges against the Employer (subsequent to the individual nurses' charges and after [redacted] had already been terminated) did the Employer bother to interview known witness [redacted] in an obvious attempt to cover its bases and shore up its pre-determined stance. Were the Employer truly interested in conducting a thorough investigation, [redacted] would have been interviewed at the same time as the rest of the witnesses, especially because Sutter was well aware of [redacted]

presence given that [redacted] walked through the hallway with [redacted] a witness Sutter apparently did interview. Instead, the Employer flagrantly ignored [redacted] until it faced increased scrutiny from the Union and the Region. And even then, Sutter's interview of [redacted] demonstrates its culpable actions. In stark contrast to the rest of the nurses interviewed by Sutter HR, [redacted] was asked to meet in-person with a Sutter attorney. Under these intimidating circumstances, Sutter no doubt hoped that [redacted] would feel compelled to state what [redacted] knew the Employer wanted to hear, but courageously [redacted] confirmed what Sutter already knew: that [redacted] never touched [redacted] and that [redacted] [redacted] and [redacted] were in no way acting in a threatening, restraining, or intimidating manner. If Sutter actually had any intention of taking such contradictory testimony seriously, it might have then decided to re-assess the disciplines and terminations and/or re-open its investigation to attempt to get a better sense of what actually happened during the conversation in question. Not surprisingly, however, Sutter made no changes to its course of action.

A failure to conduct a fair and complete investigation "leads to the conclusion that [the employer] was not genuinely interested in knowing the underlying facts and circumstances of the events but, rather, was looking for a pretext to discharge [the employee]." *Amcast Automotive of Indiana, Inc. and John Rowe*, 348 NLRB 836, 850 (2006). Indeed, the nature of the Employer's investigation here certainly shows that Sutter was never really interested in knowing the underlying facts and circumstances of events, but was rather more interested in attempting to cover their own liability for patently unlawful disciplines and termination of a Union nurse leader. As such, even the Region's improper reliance on the Employer's supposed good faith ("thorough" and "unbiased") investigation is unsupported.

V. The Region Could Have Exercised Its Investigative Subpoena Authority

As the Union has repeatedly emphasized throughout its Appeal and Motion for Reconsideration, the Region should have left any credibility resolutions "not of such patent clarity as to be readily susceptible of resolution without resort to the crucible like testing of an evidentiary hearing" to an ALJ. *Union Carbide*, 276 NLRB 1410 (1985). Here, the Region cannot claim that any of the key witnesses were shown to be patently or obviously incredible and the Region had more than enough testimony and evidence supporting the charges to issue complaint. However, in the event that Region felt it had insufficient testimonial evidence (as no other kind exists in this case) to show that no misconduct occurred so opprobrious as to lose protection of the Act under the burden shifting test of *Burnup & Sims*, the Region should have obtained additional affidavit testimony from other known witnesses like [redacted] and [redacted] or the three employees who pushed the isolette carriage down the hallway. If the Region was unable to procure such affidavits voluntarily, it should have relied upon the issuance of investigatory subpoenas to collect testimony from witnesses too intimidated by the actions of their Employer to come forth voluntarily.

Casehandling Manual Section 10064 quoted above urges Board Agents' consider the use of investigatory subpoenas of third-party witnesses to aid in credibility resolution dilemmas:

"Third-party witnesses may often be helpful in providing evidence to assist in an administrative resolution of factual conflicts or credibility disputes. Thus, Regional Offices should, where appropriate, contact such witnesses and consider issuance of an investigative subpoena where necessary." Rooted in Section 11(1) of the Act, the Region's authority to issue such subpoenas is broad. Although the Casehandling Manual cautions that investigative subpoenas "are no substitute for a promptly initiated, dogged, and thorough pursuit of relevant evidence from cooperative sources," it reflects, almost verbatim, the language of GC Memo 00-02, granting the Regional Director "full discretion to issue precomplaint investigative subpoenas *ad testificandum* and *duces tecum* to charged parties and third-party witnesses whenever the evidence sought would materially aid in the determination of whether a charge allegation has merit and whenever such evidence cannot be obtained by reasonable voluntary means."

As such, any claim by the Region that it did not have sufficient evidence to issue complaint on these charges is incorrect and its partial dismissal decision should be overturned by the General Counsel.

VI. The Region Should Rescind Its Partial Dismissals and Issue Complaint on All Outstanding Allegations

As outlined above, the Region erred in its partial dismissal of the charges related to the disciplines and termination of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) The Region placed improper weight on a flawed finding that the Employer's investigation was "thorough" and "unbiased;" the Region made inappropriate credibility determinations that necessarily should have been made by a trier of fact; and the Region was in possession of more than sufficient evidence to support the issuance of complaint on all allegations. Even so, the Union has procured and supplied additional evidence attached to this appeal, including the sworn declaration of (b) (6), (b) (7)(C) another witness testifying that (b) (6), (b) did not see any inappropriate conduct from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) the sworn declaration of (b) (6), (b) (7)(C) a (b) (6), (b) (7)(C) Sutter RN testifying that the only past incidences of workplace violence (b) (6), (b) can recall resulted in far less discipline issued than the instant case; and the contemporaneous text messages from (b) (6), (b) (7)(C) directly following the conversation with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), demonstrating (b) (6), (b) (7)(C) state of mind at the time and indicating no deliberate threats or intimidation occurred.

With the evidence already adduced, the additional evidence now provided, and the appropriate analysis of the applicable NRLB rules, guidance, and case law, there can be no dispute that the Region should rescind its partial dismissal and promptly issue complaint.

> If the appeal raises issues or evidence the Regional Office has not previously considered, the Regional Office should analyze the new material in its comment on appeal. If the Regional Office concludes that the appeal raises issues requiring further investigation, the Office of Appeals should be notified and the investigation promptly completed. If the appeal or further investigation leads the Regional Office to conclude that allegations in the charge warrant complaint, it should telephonically or electronically notify the Office of Appeals, prior to revocation, of its intention to revoke the dismissal.

NLRB Casehandling Manual Section 10122.8. The rules and guidance give the Region the authority to promptly issue complaint upon receipt of appeal and analysis of additional evidence provided, and it should do so immediately in these circumstances, where Section 10(j) relief should also be pursued. If the Region still believes that it has insufficient evidence to put the credibility of RNs [redacted] and [redacted] against that of an already discredited Employer, then *at a minimum* the Region should re-open the investigation in light of the issues raised herein and the supplementary evidence provided by CNA attached hereto to pursue investigatory subpoenas prior to issuance of complaint.

Conclusion

The Union respectfully but strongly disagrees with the Region's Partial Dismissal in this case. The Region's determination to dismiss those allegations concerning RNs [redacted] and [redacted] disciplines and [redacted] termination was clearly in error, and absent rescission by the Region, must be reversed by General Counsel.

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

Marie K. Walcek
David B. Willhoite
Legal Counsel

EXHIBIT 1

County of El Dorado
State of California

Sutter Medical Center, Sacramento
Case 20-CA-196911 et al.

CONFIDENTIAL WITNESS DECLARATION

I, [redacted], hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I presently work as a Registered Nurse ("RN") in the [redacted] ("[redacted]") at Sutter Medical Center, Sacramento ("Sutter"). I have worked as an RN in the [redacted] at Sutter since [redacted].

2. On or around [redacted], 2017, I attended a town hall meeting in the NICU with Sutter [redacted]. Following the town hall, I exited with my coworker and carpool companion [redacted] and I headed directly upstairs after the town hall to the 7th floor, where the [redacted] is located, to finish up some work related business. After about 15 minutes, [redacted] and I went back downstairs to depart for the day.

3. On our way out, [redacted] and I passed through the hallway in front of where the town hall was held. As we walked by, I observed [redacted] RNs [redacted], [redacted], and [redacted] standing in the hallway speaking with [redacted] [redacted]. They were standing close together in conversation. I could not hear exactly what they were saying, but I could observe that the conversation seemed passionate and I assumed that they were likely discussing some of the workplace issues that had been raised at the town hall. There was no yelling or touching going on and there was nothing about the conversation that I observed that made me concerned or worried. I continued walking down the hallway while [redacted] remained behind. I rounded the corner of the

hallway and waited there for [redacted]. From that point, I could no longer see the conversation with [redacted] and [redacted].

4. While I was waiting for [redacted], I heard [redacted] voice get a little louder. I heard [redacted] say something about being done with the conversation. I did not hear anyone else with a raised voice. Shortly thereafter, [redacted], [redacted], and [redacted] came around the corner to where I was standing. I believe [redacted] and another nurse whom I cannot remember were also there. [redacted] seemed upset and expressed concern about [redacted] and not wanting the conversation to end the way it had. A few minutes later, [redacted] came over to where we were standing, presumably after having just been with [redacted]. [redacted] told [redacted] that [redacted] wanted to speak with [redacted] was initially resistant to that idea, but I urged [redacted] to hear [redacted] out. [redacted] again expressed that [redacted] wanted to speak with [redacted] to clear things up and [redacted] said that would be OK, since [redacted] was with other people. At that point, [redacted] went upstairs to speak with [redacted] and I left the hospital together from there.

5. On or around May 5, 2017, I received a phone call from Sutter HR asking if I would be willing to speak with a Sutter attorney about what I had observed on [redacted]. I agreed to meet with the attorney. A few days later, in or around the second or third week of May, I met with the Sutter attorney. The attorney asked me to describe what I had witnessed of the conversation with [redacted] and [redacted] on [redacted]. I described what I had seen on [redacted] just as I have in this Declaration. The Sutter attorney specifically asked me if I had seen anyone touch anyone, and I responded that no, I had not. The attorney asked me how [redacted], [redacted], and [redacted] were standing and I related what I observed as I have in this Declaration. The attorney asked me if I felt that if [redacted] wanted to leave the conversation, would [redacted] have been able to do so freely, and I responded that yes, anyone would have been able to leave the

conversation freely. The attorney asked me who all I observed being present in the hallway, and I responded that the only people I observed were [redacted] and another nurse whom I could not remember. The attorney took notes from our conversation and on my answers to the questions. I do not remember if I was asked to sign anything from the meeting.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 10, 2017 in Placerville, California.

[redacted]

EXHIBIT 2

Phone ●●●○○ LTE 5:25 PM 100%

6

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Tue, (b) (6), (b) (7)(C), 6:19 PM

I just made (b) (6), (b) (7)(C) cry and I didn't mean to do that at all. Please console (b) (6), (b) (7)(C) if you can.

I feel horrible

(b) (6), (b) (7)(C) wouldn't let me apologize or talk to (b) (6), (b) (7)(C)

I really want (b) (6), (b) (7)(C) to be ok because I think (b) (6), (b) (7)(C) misunderstood what I was saying and the thing I was that I completely agree with what (b) (6), (b) (7)(C) was saying


Phone ●●●●● LTE
3:45 PM
61%
16
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
Please console (b) (6), (b) (7)(C) if you can.
I feel horrible
(b) (6), (b) (7)(C) wouldn't let me apologize or talk to (b) (6), (b) (7)(C)
I really want (b) (6), (b) (7)(C) to be ok because I think (b) (6), (b) (7)(C) misunderstood what I was saying and the thing I was that I completely agree with what (b) (6), (b) (7)(C) was saying
I am trying. I am honestly trying (b) (6), (b) (7)(C) and I don't even know what to do.
Delivered
Wed, (b) (6), (b) (7)(C), 10:26 AM
Left you a voicemail. Need to meet with you today at 2:30 in HR.
Message

EXHIBIT 3

County of Sacramento
State of California

Sutter Medical Center, Sacramento
Cases 20-CA-196911 et al.

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C), hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I have worked at Sutter for (b) (6), (b) (7)(C) total and as an RN at Sutter since (b) (6), (b) (7). I presently work in the (b) (6), (b) (7)(C) ((b) (6), (b) (") at Sutter. I formerly worked as (b) (6), (b) (7)(in the in the (b) (6), (beginning in or around (b) (6), (b) (7. Prior to that, I worked as a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) beginning in or around (b) (6), (b) (7.

2. Approximately one year ago, I became aware that nurses at Sutter were organizing to form a union with the California Nurses Association ("Union" or "CNA"). I got to know RN (b) (6), (b) (7)(C) around this time. I have interacted with (b) (6), (frequently since then.

3. Around 2006, I heard of a workplace violence incident in the Operating Room unit. I heard from several nurses that there was a physical altercation between (b) (6), (b) (7)(C) and a (b) (6), (b) (7)(C). Although I understood the incident to be quite severe, I knew that neither of the individuals were terminated, because I continued to see them on shift after the incident. They are both still employed at the Hospital to date.

4. On or around (b) (6), (b) (7)(C) of this year, I learned that (b) (6), (b) (7)(C) had been fired for an alleged workplace violence incident. I was surprised to hear this, both because I have never known (b) (6), (b) (to be violent and also because I knew that in the previous, seemingly much

more serious physical alternation between the (b) (6), (b) (7)(C) and the (b) (6), (b) (7)(C), neither were terminated.

5. Shortly after I learned of [redacted] termination, I contacted the (b) (6), (b) (7)(C) involved in the prior physical altercation directly to confirm my understanding of events from what I had heard. The (b) (6), (b) (7)(C) confirmed to me that [redacted] was in fact involved in a physical altercation while at work at Sutter. According to the (b) (6), (b) (7)(C), this particular (b) (6), (b) (7)(C) had been bullying [redacted] for quite some time. That day, the (b) (6), (b) (7)(C) went to the restroom. Oh [redacted] way out, the (b) (6), (b) (7)(C) walked by and made an aggressive gesture toward the (b) (6), (b) (7)(C). After many years of harassment, the (b) (6), (b) (7)(C) snapped and responded by punching the (b) (6), (b) (7)(C). This took place in a hallway near a restroom in the Unit in a generally high-trafficked area. The (b) (6), (b) (7)(C) took the matter to HR. At first, HR did nothing. However, when another employee not involved in the incident sarcastically brought up to management that management seemingly condoned such workplace violence, both [redacted] involved were then placed on leave for a couple of days. The (b) (6), (b) (7)(C) was placed on leave while [redacted] was already out on vacation time. Both [redacted] retained employment at Sutter after the incident. Neither was placed on a last chance agreement.

6. To my knowledge, there have been no changes to the workplace violence policy between the time that incident happened and the present.

7. Approximately one year ago, a friendship between a Sutter RN and (b) (6), (b) (7)(C) [redacted] (not the one involved in the physical altercation described above) turned sour. The [redacted] began harassing the RN with phone calls and other inappropriate behavior, including contacting the RN at [redacted] home. The RN complained to management and HR regarding this behavior. HR met with (b) (6), (b) (7)(C) and told [redacted] to cease engaging inappropriately with the RN. After the meeting,

(b) (6), (b) (7)(C) continued to harass the RN. The RN continued to complain to HR that (b) (6), (b) felt threatened and uncomfortable, but HR did not respond any further. I am aware of this situation because I was working as an (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") at the time, and I was called in as a witness when HR spoke to (b) (6), (b) (7)(C).

8. It has been my experience at Sutter, including in my previous role as an (b) (6), (b) (7)(C) that when HR conducts investigations into misconduct, HR records witness accounts according to HR's impression and interpretation of what a witness says, rather than taking direct statements from witnesses.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 7, 2017 in Sacramento, California.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

EXHIBIT 2

Supplemental Position Statement on Appeal

Sutter Medical Center, Sacramento

Case 20-CA-197833

Tuesday, March 28, 2017: Town Hall meeting for NICU

I attended the 1100 meeting and took notes.

Tuesday, April 11 @ 4:00 pm: Town Hall meeting with [redacted]

- I attended and took notes
- Meeting was supposed to be from 4-5 pm, but lasted until 6:15 pm

After the meeting, I clocked out, then was talking with [redacted] about the meeting

- In attendance: [redacted] and me—I don't know when individuals came into the conversation

Topics of conversation

- I said that I was "frustrated" and "on the verge of tears for most of the meeting"
  - I said that I felt like we weren't listened to
  - I said that [redacted] didn't take any notes

- We talked about where to put the flip chart in the unit
  - [redacted] said by the bathrooms (by the locker room), but I misunderstood, and said that the guys wouldn't be able to write on it. [redacted] clarified that it was the hallway. (Not said during the talk with [redacted] and [redacted]—[redacted] and [redacted] were there at that point)
  - [redacted] said that [redacted] didn't want anything stupid written on it like when we had the poster for the golf tournament—people wrote different things on the poster
  - [redacted] said that people are going to write what they're going to write.
- I felt as though the conversation was going quite well. I felt as though [redacted] was understanding my point of view, and I was understanding a [redacted] point of view.
- At one point, [redacted], and [redacted] + 2 [redacted] walked down the hallway with the transport isolette. Everyone needed to move over to the side to let them pass. I said to [redacted] something like I'm so sorry you have to go on a transport at the end of the shift. [redacted] acknowledged and agreed.
- The conversation continued to go well for several minutes.
- At one point, I looked at my phone—I don't know if I'd just gotten a call, or just looked at it because I was hoping to talk with my [redacted] that evening ([redacted] difference from [redacted]). The meeting had gone an hour and a quarter past the original timeline, and when I saw that [redacted] had called, my focus was more on the phone, and less on the conversation in front of me.
  - I wasn't paying attention to the conversation

- I looked back to my phone—I think I stepped back a couple of steps
- I looked up, and saw that [redacted] was upset, then walking down the hall crying.
  - I was very confused—didn't understand what just happened.
  - We had just had a meeting about communication.
  - I remembered that the [redacted] said in the meeting that, "No one is going to get fired."

Wednesday, [redacted] 2017

10:31 am: [redacted] left a voice mail on my home phone for me to call [redacted] on [redacted] cell phone: [redacted]. [redacted] told me that it's important that I call [redacted] back today because [redacted] needed to meet me at 3:15 today

11:30+/- am: I called [redacted] cell phone.

- [redacted] told me that I had to go to a meeting today and offered 1 pm, 1:30 pm, or 3:30 pm.
- I told [redacted] that I had a clinical practice meeting at 2:30.
- [redacted] said, "You can't go to work related activities until we meet."
- I told [redacted] "I'm uneasy about this."
- I asked if my [redacted] could come with me. [redacted] said, "[redacted] can come, but [redacted] has to wait outside." "Only the employee, the director, and the HR partner" can be in the meeting. [redacted] is "not welcome to be part of the meeting."
- I asked if I could record it. [redacted] said, "No, but you can take notes."

1:30 pm meeting: [redacted], [redacted] me

- [redacted] asked me if I know about the incident involving [redacted]—can I recall that incident
- Me: Yes, I was nearly in tears for most of the meeting. I was frustrated. [redacted] didn't take any notes. We talked about the poster—flip chart paper—in the unit. [redacted] didn't want any writing on it like on the golf tournament poster. [redacted] was talking, too. I felt like it was a good conversation. I felt like I was hearing [redacted] and that [redacted] was hearing me. Then because of my phone, I wasn't paying attention. I'm very confused with this meeting.
- [redacted] free conversation. No physical contact? No. What was my body language? Did I raise my voice? No. Didn't feel any tension.
- [redacted] questions after [redacted] was there—body language? I don't know.
- [redacted] before [redacted] got there, [redacted] said that it was a "productive conversation", "mirrored" what I was saying. *******was [redacted] trying to trip me up?*******
- Me: I don't understand this meeting.
- Other peers were there. I said something_____
- [redacted] "I don't have [redacted] notes in front of me." "[redacted], [redacted]"

- [redacted] after [redacted] was in the conversation—
  - [redacted] told [redacted] that [redacted] was upset. [redacted] left (to go upstairs), the [redacted] left. I don't remember after the phone call.
- Me: "Why no hospital activity before this meeting?"
- [redacted] "It's my understanding that you were playing a major role in the negative interaction."
  - Me: "Let me get this right." I repeated the quote until it was all written down.
- [redacted] "wanted to meet with all parties immediately"—investigation

***** I was asked to step out, go to the waiting room. [redacted] and [redacted] would get me. About 5 minutes later, I went back to [redacted] office *****

There was an envelop on the table.

- [redacted] "We have to put you on administrative leave." "Because we need to do a complete investigation."
  - [redacted] told me that I don't need to take notes because [redacted] would read the paper verbatim
- Me: "I feel that this is inappropriate."
- [redacted] or [redacted] "People came through. Said that this was threatening."
- [redacted] "Our number 1 priority is that we are safe for our patients and our staff."
- Me: "I don't agree with any of this."
- [redacted] or [redacted] "signature says you've read it, not that you agree with it."
- Me: from the [redacted] meeting—[redacted] talked about open communication. I feel__
  - Just culture?
- [redacted] Just culture is when you make an error—there's an investigation
- [redacted] Employee/manager ([redacted] felt [redacted] wasn't listened to, not respected, intimidated. Won't be tolerated. "take appropriate action"
- [redacted] "Work place violence" was brought up; have to do a thorough investigation
  - Each investigation is different
- [redacted] will call me as early as Monday—up to 2 weeks
  - [redacted] will be my contact
- [redacted] "PTO—unpaid pending investigation
- [redacted] "At what point do I call my attorney?"
- [redacted] You can call your attorney anytime you want.

Didn't clock in for this meeting: 1330 – 1410.

EXHIBIT 3

Supplemental Position Statement on Appeal
Sutter Medical Center, Sacramento
Case 20-CA-197833

Sacramento Sierra Region

We Plus You

CORRECTIVE ACTION NOTICE

To: (b) (6), (b) (7)(C) **Employee Number:** (b) (6), (b) (7)(C) **Department:** (b) (6), (b)

Date: (b) (6), (b) (7)(C), 2017 **Manager/Director:** (b) (6), (b) (7)(C)

We believe that every individual wants and needs to know if satisfactory performance is not being achieved and/or if policies and practices are being violated. Corrective Acton is a positive step toward resolution of an identified problem and, to the extent possible, gives each employee an opportunity to correct job related behavior/performance. Involuntary termination is not the desired result, and is used only after significant attempts have been made to solve the problem, or in response to serious conduct violations.

PART I CORRECTIVE ACTION TAKEN:

☐ **WRITTEN WARNING LEVEL 1:** The following problem must be resolved by _____ or further corrective action will be needed.
Date

☐ **FINAL WRITTEN or SUSPENSION:** The following problem has led to your suspension from _____ to _____
Dates

☐ **WRITTEN WARNING LEVEL 2:** The following problem must be resolved by _____ or it will result in: ☐ Suspension ☐ Termination
Date

☒ **INVOLUNTARY TERMINATION:** The following problem has lead to your termination effective (b) (6), (b) 17
Date

PART II DESCRIPTION OF PROBLEM:

The specific problem is (including dates):

On (b) (6), (b) 16, (b) (6), (b) exhibited hostile, intimidating and threatening behavior towards an (b) (6), (b) (7)(C) (b) (6), (b) (7) The investigation into this incident revealed that the (b) (6), (b) was backed up against the wall with (b) (6), (b) and two other nurses surrounding (b) (6), (b) (5), (b) was standing in front of the (b) (6), (b) and used (b) (6), body to physically touch the (b) (6), (b) (7) body in an aggressive manner. (b) (6), (b) was pointing (b) (6), finger in the (b) (6), (b) (7) face and being abusive and aggressive in (b) (6), communications with the (b) (6), (b) (6), (b) used a raised voice to shout at the (b) (6), (b) though (b) (6), was standing so close to the (b) (6), (b) that (b) (6), was touching (b) (6), By backing (b) (6), against a wall, (b) (6), (b) also physically blocked the (b) (6), (b) from being able to walk away. The incident took place in a work area in front of multiple coworkers, such that it caused a disruption in the workplace and undermined the (b) (6), (b) (7) supervisorial authority. The (b) (6), (b) was visibly distressed to such an extent that an observing employee was prompted to step in between the (b) (6), (b) and (b) (6), (b) to remove the (b) (6), (b) from the situation. (b) (6), (b) began to follow the employee to the elevator and the (b) (6), (b) asked (b) (6), to stop; (b) (6), (b) continued to follow (b) (6), requiring the (b) (6), (b) to repeat (b) (6), request that (b) (6), (b) stop following (b) (6),

Violation of the Human Resource Policy Guidelines for Disruptive Behavior and Prevention of Workplace Violence:

- Disruptive Behavior: Any incident in which the delivery of care or services is interrupted or impeded. This includes yelling, being hostile after reasonable request and demanding immediate and unreasonable action.
- Threatening Behavior: Any verbal or non-verbal expression of an intention to inflict pain or injury or to cause annoyance or alarm. This includes . . threatening to harm people directly or indirectly and intimidating actions, including: blocking pathway, leering, stalking.
- Harassment: Any intent to harass, annoy, threaten or alarm another person.

A resolution to the problem is important because:

Sutter Medical Center, Sacramento (SMCS) is committed to creating the best work environment possible, including professional and respectful treatment of its employees. SMCS will not tolerate any behavior that is in violation of our policies.

Assistance and/or previous warning offered by Supervisor:

E-Learning: Management of Aggressive Behavior Review – (b) (6), (b)/2016

Criteria for determining whether or not the problem is resolved: N/A

Date(s) for progress review and follow-through meetings(s): N/A

Other Comments (i.e., supporting data, etc.):

(b) (6), (b) (7) behavior was a serious violation of SMCS Disruptive Behavior and Workplace Violence policy. Due to the serious nature of this incident, (b) (6), (b) (7) employment is terminated effective today.

Grievance Policy B40 given to employee.

PART III DISPOSITION OF ACTION NOTICE:

☐ **Written Warning/ Level 1 and 2:** Under certain conditions, after one year from the date of this Corrective Action Notice, you may make a written request for the Department Director to have this document removed from your HR file. In order for this to occur, there must not be any additional or ongoing corrective action issues.

(b) (6), (b) (7)(C)

I disagree with the above

(b) (6), (b) (7)(C)

☒ Suspension/Termination: In cases involving a Final Written/ Suspension and/or Termination, this from becomes a permanent part of your HR file.

I disagree with Decision

PART IV **SIGNATURES:**

Employee's signature below indicates receipt of above notice, and does not necessarily imply agreement. Employee may add comments on reverse side or pursue right to grievance according to the company's Grievance Procedures.

E (b) (6), (b) (7)(C)	Date (b) (6), (b) (7) 2017	Supe (b) (6), (b) (7)(C)	Date (b) (6), (b) (7)(C) 2017
W n)	Date	Time	

This form is to be discussed with the employee. Obtain necessary signatures. DISTRIBUTION: Department files; Employee copy; Forward copy to HR immediately

Sutter Health
Sacramento Sierra Region
We Heal You

CORRECTIVE ACTION NOTICE

To: [redacted] **Employee Number:** [redacted] **Department:** [redacted]
Date: [redacted] 2017 **Manager/Director:** [redacted]

We believe that every individual wants and needs to know if satisfactory performance is not being achieved and/or if policies and practices are being violated. Corrective Acton is a positive step toward resolution of an identified problem and, to the extent possible, gives each employee an opportunity to correct job related behavior/performance. Involuntary termination is not the desired result, and is used only after significant attempts have been made to solve the problem, or in response to serious conduct violations.

PART I CORRECTIVE ACTION TAKEN:

☐ **WRITTEN WARNING LEVEL 1**: The following problem must be resolved by _____ or further corrective action will be needed.
Date

☐ **FINAL WRITTEN or SUSPENSION**: The following problem has led to your suspension from _____ to _____
Dates

☒ **WRITTEN WARNING LEVEL 2**: The following problem must be resolved immediately or it will result in: ☐ Suspension ☐ Termination
Date

☐ **INVOLUNTARY TERMINATION**: The following problem has lead to your termination effective:
Date

PART II DESCRIPTION OF PROBLEM:

The specific problem is (including dates):

On [redacted]/16, [redacted] exhibited hostile, intimidating and threatening behavior towards an [redacted]. The investigation into this incident revealed that the [redacted] was backed up against the wall with [redacted] and two other nurses surrounding [redacted] and the two nurses were in very close proximity to the [redacted] face and body, in an intimidating and threatening manner. The incident took place in a work area in front of multiple coworkers, such that it caused a disruption in the workplace and undermined the [redacted] supervisorial authority. The [redacted] was visibly distressed to such an extent that an observing employee was prompted to intervene to remove the [redacted] from the situation.

Violation of the Human Resource Policy Guidelines for Disruptive Behavior and Prevention of Workplace Violence:

- Disruptive Behavior: Any incident in which the delivery of care or services is interrupted or impeded. This includes yelling, being hostile after reasonable request and demanding immediate and unreasonable action.
- Threatening Behavior: Any verbal or non-verbal expression of an intention to inflict pain or injury or to cause annoyance or alarm.
- Harassment: Any intent to harass, annoy, threaten or alarm another person.

A resolution to the problem is important because:

Sutter Medical Center, Sacramento (SMCS) is committed to creating the best work environment possible, including professional and respectful treatment of its employees. SMCS will not tolerate any behavior that is in violation of our policies.

Assistance and/or previous warning offered by Supervisor:

E-Learning: Management of Aggressive Behavior – Review: [redacted]/2016

Criteria for determining whether or not the problem is resolved:

There are to be no other violations of SMCS Disruptive Behavior and Prevention of Workplace Violence policy. [redacted] will immediately be responsible for consistent and sustained professional and cooperative behavior at all times while on duty and on hospital premises.

Date(s) for progress review and follow-through meetings(s):

[redacted] will be required to re-take the Management of Aggressive Behavior e-learning course within the next 30 days. [redacted] will also meet with [redacted] every two weeks for the next 60 days. The specific days to be determined by [redacted] to ensure all policies are being met.

Other Comments (i.e., supporting data, etc.):

Any additional incidents that are in violation of SMCS Disruptive Behavior and Workplace Violence policies may result in further corrective action, up to and including termination of employment.

Grievance Policy B40 given to employee.

PART III DISPOSITION OF ACTION NOTICE:

☒ Written Warning/ Level 1 and 2: Under certain conditions, after one year from the date of this Corrective Action Notice, you may make a written request for the Department Director to have this document removed from your HR file. In order for this to occur, there must not be any additional or ongoing corrective action issues.

☐ Suspension/Termination: In cases involving a Final Written/ Suspension and/or Termination, this from becomes a permanent part of your HR file.

PART IV SIGNATURES:

Employee's signature below indicates receipt of above notice, and does not necessarily imply agreement. Employee [redacted] comments on reverse side or pursue right to grievance according to the company's Grievance Procedures.

Signed Under Duress & I disagree with all of the above

[redacted]	Date [redacted] 17	[redacted]	Date [redacted] 17
	Date	Time in Conference	

This form is to be discussed with the employee. Obtain necessary signatures. DISTRIBUTION: Department files, Employee copy. Forward copy to HR immediately

Sutter Health
Sacramento Sierra Region
We Plus You

CORRECTIVE ACTION NOTICE

To: (b) (6), (b) (7)(C) **Employee Number:** (b) (6), (b) (7)(C) **Department:** (b) (6), (b)
Date: (b) (6), (b) (7)(C) 2017 **Manager/Director:** (b) (6), (b) (7)(C)

We believe that every individual wants and needs to know if satisfactory performance is not being achieved and/or if policies and practices are being violated. Corrective Acton is a positive step toward resolution of an identified problem and, to the extent possible, gives each employee an opportunity to correct job related behavior/performance. Involuntary termination is not the desired result, and is used only after significant attempts have been made to solve the problem, or in response to serious conduct violations.

PART I CORRECTIVE ACTION TAKEN:

☐ **WRITTEN WARNING LEVEL 1**: The following problem must be resolved by _____ or further corrective action will be needed.
Date

☐ **FINAL WRITTEN or SUSPENSION**: The following problem has led to your suspension from _____ to _____
Dates

☒ **WRITTEN WARNING LEVEL 2**: The following problem must be resolved immediately or it will result in: ☐ Suspension ☐ Termination
Date

☐ **INVOLUNTARY TERMINATION**: The following problem has lead to your termination effective:
Date

PART II DESCRIPTION OF PROBLEM:

The specific problem is (including dates):

On (b) (6), (/16, (b) (6), (b) exhibited hostile, intimidating and threatening behavior towards an (b) (6), (b) (7)(C) (b) (6), (b) (7 The investigation into this incident revealed that the (b) (6), (b) was backed up against the wall with (b) (6), (b and two other nurses surrounding (b) (6), (b) and the two nurses were in very close proximity to the (b) (6), (b) (7 face and body, in an intimidating and threatening manner. The incident took place in a work area in front of multiple coworkers, such that it caused a disruption in the workplace and undermined the (b) (6), (b) (7 supervisorial authority. The (b) (6), (b was visibly distressed to such an extent that an observing employee was prompted to intervene to remove the (b) (6), (b) from the situation.

Violation of the Human Resource Policy Guidelines for Disruptive Behavior and Prevention of Workplace Violence:

- Disruptive Behavior: Any incident in which the delivery of care or services is interrupted or impeded. This includes yelling, being hostile after reasonable request and demanding immediate and unreasonable action.
- Threatening Behavior: Any verbal or non-verbal expression of an intention to inflict pain or injury or to cause annoyance or alarm.
- Harassment: Any intent to harass, annoy, threaten or alarm another person.

A resolution to the problem is important because:

Sutter Medical Center, Sacramento (SMCS) is committed to creating the best work environment possible, including professional and respectful treatment of its employees. SMCS will not tolerate any behavior that is in violation of our policies.

Assistance and/or previous warning offered by Supervisor:

E-learning: Management of Aggressive Behavior – Review: (b) (6), (b) (7 2016

Criteria for determining whether or not the problem is resolved:

There are to be no other violations of SMCS Disruptive Behavior and Prevention of Workplace Violence policy. (b) (6), (b will immediately be responsible for consistent and sustained professional and cooperative behavior at all times while on duty and on hospital premises.

Date(s) for progress review and follow-through meetings(s):

(b) (6), (b will be required to re-take the Management of Aggressive Behavior e-learning course within the next 30 days. (b) (6), will also meet with (b) (6), (b) (6), (b every two weeks for the next 60 days. The specific days to be determined by (b) (6), (b) (6), (b) to ensure all policies are being met.

Other Comments (i.e., supporting data, etc.):

Any additional incidents that are in violation of SMCS Disruptive Behavior and Workplace Violence policies may result in further corrective action, up to and including termination of employment.

Grievance Policy B40 given to employee.

PART III DISPOSITION OF ACTION NOTICE:

☒ Written Warning/ Level 1 and 2: Under certain conditions, after one year from the date of this Corrective Action Notice, you may make a written request for the Department Director to have this document removed from your HR file. In order for this to occur, there must not be any additional or ongoing corrective action issues.

(b) (6), (b) (7)(C)

☐ Suspension/Termination: In cases involving a Final Written/ Suspension and/or Termination, this from becomes a permanent part of your HR file.

PART IV **SIGNATURES:**

Employee's signature below indicates receipt of above notice, and does not necessarily imply agreement. Employee may add comments on reverse side or pursue right to grievance according to the company's Grievance Procedures.

Employee's Signature	Date	Supervisor's Signature	Date
Employee's Signature I disagree with signed corrective action under duress	[redacted]/17	Supervisor's Signa[redacted]	Date [redacted]2017
Witness (If Employee refuses to sign)	Date [redacted]	[redacted]onference	

This form is to be discussed with the employee. Obtain necessary signatures. DISTRIBUTION: Department files, Employee copy; Forward copy to HR immediately

[redacted]

EXHIBIT 4

Supplemental Position Statement on Appeal
Sutter Medical Center, Sacramento
Case 20-CA-197833

CALIFORNIA NURSES ASSOCIATION
A Voice for Nurses. A Vision for Healthcare.

Oakland
155 Grand Ave
Oakland, CA 94612
phone: 510-273-2200
fax: 510-663-1625

Via Electronic Filing

June 22, 2017

Janay Parnell, Field Examiner
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

RE: ***Sutter Medical Center, Sacramento***
Cases 20-CA-196911, et al.

Dear Ms. Parnell:

During our phone conversation of June 19, 2017, in response to a question from the California Nurses Association ("Union") regarding the provision of further evidentiary support for the instant charges, you referenced the case *Crowne Plaza LaGuardia*, 357 NLRB 1097 (2011) as informative to the Region's analysis of the facts under the framework provided by *Atlantic Steel*. The Union submits this addendum to its Position Statement of June 6, 2017 to address the relevance of that case. The Union maintains that the accusation that RNs (b) (6), (b) (7)(C) [redacted] or (b) (6), (b) (7)(C) physically threatened and/or touched [redacted] is a ludicrous fabrication. All those witnesses directly involved have stated that neither (b) (6), (b) (7)(C) [redacted] or [redacted] acted with any hint of aggression, let alone physically so, the Employer has not provided any credible evidence to establish such actions, and the long and well-established reputations of the nurses involved, even documented by Sutter management itself, consistently underscores (b) (6), (b) (7)(C) [redacted] and [redacted] roles as compassionate, professional, and temperate leaders in the hospital. However, even granting for the sake of argument the Employer's outrageous contention that (b) (6), (b) (7)(C) made physical contact with [redacted] the context demonstrates that any such contact was inadvertent and would not be cause for (b) (6), (b) (7)(C) to lose protection under the Act.

As the Region can clearly recognize, and as the Union emphasized in its June 6 Position Statement, RNs (b) (6), (b) (7)(C) [redacted] and [redacted] were engaged in protected concerted activity ("PCA") when the alleged incident with [redacted] occurred that led to their respective discipline. Indeed, they had just come from a town hall meeting with Sutter Medical Center, Sacramento ("Sutter") [redacted] (b) (6), (b) (7)(C), where they raised issues regarding the terms and conditions of their employment with the highest levels of management, and were encouraged by [redacted] to discuss those issues with their supervisors and managers in the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) ("[redacted]") where the nurses work. [redacted] is an (b) (6), (b) (7)(C) [redacted] in the [redacted] and the discussion in the hallway centered on the placement of a suggestion board for the raising of issues with regard to working conditions and suggestions for their possible solution. The discussion also touched on nurse-to-patient ratios, the leading area of friction and concern for [redacted] RNs regarding their working conditions.

The question raised under the four-part *Atlantic Steel* test is whether, by their conduct, RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) concerted activity lost the protection of the Act. The facts of *LaGuardia* strongly suggests it did not. In *LaGuardia,* the Board held that three employees who *deliberately* and excessively touched their supervisor with an *effort to restrain him* as a means of presenting him with an employee-signed petition forfeited protection under the Act. *Crowne Plaza LaGuardia*, 357 NLRB at 1101 (emphasis added). There, one employee deliberately grabbed the supervisor's shoulder to prevent him from leaving and reached around his waist with the petition; another employee pushed her chest against the supervisor and moved from side to side, deliberately blocking his exit; a third employee deliberately grabbed the supervisor's arm to restrain him from fleeing. *Id.* at 1098. The Board held that such deliberate physical contact "reasonably threatened [the supervisor] and the Respondent's ability to maintain workplace order and discipline." *Id.* at 1101. However, a fourth employee did not forfeit PCA for briefly touching a security guard's wrist as the guard waved his arms to clear a path for the supervisor. *Ibid.* Because the fourth employee did not deliberately touch the security guard with any direct intention to restrain him, her conduct was materially different from the other three employees, and therefore her discipline was protected under the Act, and the Employer violated 8(a)(1) in bringing discipline against her. *Ibid.*

In the present case, under no plausible interpretation could the conduct of RNs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) be reasonably seen as threatening (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or Sutter's ability to maintain workplace order and discipline. *See Id.* at 1101. (b) (6), (b) (7)(C) **did not** deliberately touch (b) (6), (b) (7)(C) with an effort to restrain (b) (6), (b) *Ibid. Even if* (b) (6), (b) (7)(C) incidentally contacted (b) (6), (b) (7)(C) during their discussion, for example because they were squeezed up against the wall by a passing gurney, such conduct is not sufficient to forfeit protection of the Act. *Ibid.* Sutter nonetheless speciously claims that (b) (6), (b) (7)(C) aggressively touched (b) (6), (b) (7)(C) in an intimidating and threatening manner and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7) physically surrounded (b) (6), (b) (7)(C) and blocked (b) (6), (b from walking away. However, this claim is not supported by any facts, even as laid out by the Employer, as (b) (6), (b) (7)(C) did freely walk away from the conversation when (b) (6), (b became emotionally agitated in response to the nurses' addressing of unsatisfactory working conditions, including ineffective management communication. Sutter did not present evidence as a result of their sham investigation demonstrating that (b) (6), (b) (7)(C) alleged actions were deliberate. Nor does Sutter show that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or (b) (6), (b) (7) made a deliberate effort to physically restrain (b) (6), (b) (7)(C) Witnesses maintain that the nurses were not verbally or physically aggressive toward (b) (6), (b) (7)(C) Further, Sutter fails to demonstrate the "particularized proof that specific individuals engaged in the misconduct at issue." *Id.* at 1100.

Rather, Sutter seized on the fact of (b) (6), (b) (7)(C) emotional state to discipline and terminate known [redacted] and outspoken advocates for the improvement of (b) (6), (b) (7)(C) RN working conditions striking their most ferocious blow in an ongoing busting campaign of lies, threats, and intimidation. It bears stressing that even if (b) (6), (b) (7)(C) bizarrely felt threatened by this "incident," even assuming there was any inadvertent physical contact, (b) (6), (own subjective emotional response is not the standard laid out by the Board in *Atlantic Steel.* Objectively, with all the facts considered, there is no way that a reasonable person would have felt threatened by the conduct of

[redacted] and [redacted] *See Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 29 fn. 2 (D.C. Cir. 2011), enfg. 355 NLRB 708 (2010).

In conclusion, the Union strongly urges the Region to see these ridiculous allegations against RNs with stellar records and decades of experience treating the most vulnerable patients for what they are. The third factor in *Atlantic Steel,* "nature of the conduct," weighs heavily in favor of [redacted] and [redacted] They were simply engaged in a constructive conversation with a supervisor in their unit on the heels of being urged to do so by the [redacted] of the hospital. If any contact occurred in that hallway on [redacted], it was certainly inadvertent, was not the cause of [redacted] emotional display, and did not result in [redacted] egress being blocked in any fashion. An examination of the facts of this case under *LaGuardia* and *Atlantic Steel* demonstrate that [redacted] and [redacted] concerted activity remained protected.

Thank you for your attention to this matter.

Sincerely,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

David Willhoite
Legal Counsel

cc: Jill Coffman, NLRB Region 20 Regional Director
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA

EXHIBIT 5

Supplemental Position Statement on Appeal

Sutter Medical Center, Sacramento

Case 20-CA-197833

CALIFORNIA NURSES ASSOCIATION

155 Grand Ave
Oakland, CA 94612
phone: 510-273-2200
fax: 510-663-1625

A Voice for Nurses. A Vision for Healthcare
www.calnurses.org

Via NLRB Electronic Filing

December 11, 2017

Peter B. Robb, General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-197833

Dear Mr. Robb,

On July 18, 2017, the California Nurses Association ("CNA" or "Union") filed an appeal and motion for reconsideration in Case 20-CA-197833 involving the discipline of RNs [redacted] and [redacted] and the termination of RN [redacted] at Sutter Medical Center, Sacramento ("Sutter" or "Employer"). Within the past week, the Union was made aware that a key Employer witness in the case, [redacted] quit [redacted] position at Sutter citing in part Sutter's manipulation of [redacted] account of events in order to wrongly terminate [redacted] While the Union has not seen [redacted] initial affidavit, it is the Union's understanding from conversations with the investigating Board Agents at Region 20 that the Region relied heavily upon [redacted] testimony in making its initial determination. In light of [redacted] recent very explicit denouncement of Sutter's manipulations of [redacted] testimony and vocal opposition to [redacted] termination, the severity of error in the Region's determination is more obvious now than ever. The Union has made attempts to reach [redacted] to provide an additional statement regarding this matter, but [redacted] has since moved out of the State and has been difficult to reach. However, [redacted] Sutter RN [redacted] came forward to provide a sworn declaration outlining [redacted] most recent conversations with [redacted] regarding these issues.

The Union feels strongly that the evidence already on file is more than enough to demonstrate Sutter's unlawful conduct and the Region's unfortunate errors in analysis and procedure that resulted in partial dismissal of this case. However, to the extent this additional sworn declaration may help to shed more light on the travesty of justice in this case, the Union hereby submits this additional evidence for the consideration of the Office of Appeals and to the Region.

Again, the Union respectfully requests that this improper dismissal be reversed.

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

Marie Walcek
Legal Counsel

cc: Jill Coffman, NLRB Region 20 Regional Director
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA

CALIFORNIA NURSES ASSOCIATION

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A Voice for Nurses. A Vision for Healthcare
www.calnurses.org

Via NLRB Electronic Filing

December 15, 2017

Peter B. Robb, General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Sutter Medical Center, Sacramento*
Case 20-CA-197833

Dear Mr. Robb,

On July 18, 2017, the California Nurses Association ("Union") filed an appeal and motion for reconsideration in Case 20-CA-197833 involving the discipline of RNs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and the termination of RN (b) (6), (b) (7)(C) at Sutter Medical Center, Sacramento ("Sutter" or "Employer"). The Union recently became aware that a key Employer witness in the case, (b) (6), (b) (7)(C), (b) (7)(D) quit [redacted] position at Sutter citing in part Sutter's manipulation of [redacted] account of events in order to wrongly terminate (b) (6), (b) (7)(C) The Union subsequently provided a declaration from (b) (6), (b) (7)(C) Sutter RN (b) (6), (b) (7)(C) describing [redacted] most recent conversations with [redacted] regarding these issues. Since then, another Sutter RN, [redacted], has come forward describing a similar conversation with [redacted] Please find attached sworn declaration from (b) (6), (b) (7)(C).

Again, the Union feels strongly that the evidence already on file is more than enough to demonstrate Sutter's unlawful conduct and the Region's unfortunate errors in analysis and procedure that resulted in partial dismissal of this case and as such, the Union respectfully requests that this improper dismissal be reversed.

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

Marie Walcek
Legal Counsel

cc: Jill Coffman, NLRB Region 20 Regional Director
Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA

County of Yolo
State of California

Sutter Medical Center, Sacramento
Case 20-CA-197833

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C), hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I work the (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") at Sutter. I have worked as a (b) (6), (b) (7)(C) RN at Sutter for about (b) (6), (b) (7)(C)

2. I heard through coworkers about the alleged incident on (b) (6), (b) (7)(C) 2017 with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) that led to (b) (6), (b) (7) being terminated. I did not witness this exchange because I was working that day. I had also heard that RN (b) (6), (b) (7)(C) was a witness of the exchange and that (b) (6), (b) had provided information to Sutter management and to the NLRB about what (b) (6), (b) witnessed.

3. On or around November 29, 2017, I heard that (b) (6), (b) (7)(C) was going to quit Sutter and move out of state.

4. On December 5, 2017, I was working my normal day shift and (b) (6), (b) (7)(C) was working as well. While on my break in the break room, I had a brief exchange with (b) (6), (b) (7)(C) and a few other coworkers who were around. Some of my coworkers were asking (b) (6), (b) (7)(C) about (b) (6), (b) decision to quit Sutter and how (b) (6), (b) felt about leaving. (b) (6), (b) (7)(C) responded that (b) (6), (b) was happy to be leaving Sutter because Sutter is deceptive, has a lot of power, and can destroy lives. (b) (6), (b) (7)(C) said that Sutter can turn peoples' words into destroying peoples' lives at the drop of the hat without any

recourse. [redacted] did not specify exactly what [redacted] was talking about, but I suspected that [redacted] was talking about the incident that led to [redacted] termination.

5. The next day, on December 6, 2017, I was working my normal shift again alongside [redacted] Following up on [redacted] remarks the day prior, I approached [redacted] to ask [redacted] what [redacted] meant. I expressed to [redacted] that I hold nothing against [redacted] regardless of what [redacted] told Sutter or the Board Agent and acknowledged that I had never talked to [redacted] directly about what happened with [redacted] I only knew what I had been told by others, but that it seemed like from what [redacted] was saying the day before that [redacted] didn't feel like what Sutter did to [redacted] was right. [redacted] responded that I was absolutely right and that [redacted] felt like Sutter had twisted [redacted] words into something that caused [redacted] to get fired. I asked [redacted] if, based on what [redacted] saw, [redacted] thought the exchange with [redacted] warranted someone getting fired. [redacted] responded that no, [redacted] termination was totally uncalled for. [redacted] expressed that at some point during the investigation, someone had even asked [redacted] what [redacted] thought should happen to those involved in the exchange, and that [redacted] ([redacted] had suggested communication classes since the whole incident seemed to just be a communication issue. I asked if [redacted] would include [redacted] in that suggestion for communication classes and [redacted] said absolutely. [redacted] then expressed that the escalation of the conversation that day all came from [redacted] not the other nurses. [redacted] said that [redacted] had tried to explain this to the Board Agent—that you have to understand how [redacted] talks, [redacted] talks louder and louder and shuts people down and that it's difficult to have a conversation with [redacted] I asked [redacted] if [redacted] ever saw [redacted] lift up [redacted] hand to [redacted] and [redacted] said yes. I asked if it appeared to [redacted] that [redacted] hand gesture seemed aggressive and [redacted] said no. I related what I had heard about the incident, which is that [redacted] had put up [redacted] hand to mirror what [redacted] was doing in the conversation in an attempt to demonstrate that [redacted] communication style was ineffective.

[redacted] responded that yes, that is exactly what it appeared to be. [redacted] said that [redacted] saw [redacted] doing a hand motion and then saw [redacted] doing the same thing back and heard them talking something about communication. I brought up that I had heard that in [redacted] termination letter, Sutter alleged that [redacted] was blocking [redacted] from exiting the conversation. [redacted] responded that that was absolutely not true. [redacted] said that nothing about the stance of anyone in that conversation was blocking [redacted] from leaving. [redacted] said that in fact, when [redacted] started crying during the conversation, [redacted] was even trying to comfort [redacted] expressed that Sutter has all the power. [redacted] then said something along the lines of, "look what they've done. They twisted my words and got someone fired and there's no way [redacted] should have been fired for what happened." I asked [redacted] if it seemed as obvious to [redacted] as it did to me at this point that Sutter blew this whole thing up because of [redacted] involvement in the Union in order to make an example out of [redacted] responded yes, absolutely because the Union would cost them (Sutter) millions of dollars.

I have read this Confidential Witness Declaration, consisting of 3 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct. Execute on December 10, 2017 in West Sacramento California.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

County of Sacramento
State of California

Sutter Medical Center, Sacramento
Case 20-CA-197833

CONFIDENTIAL WITNESS DECLARATION

I, (b) (6), (b) (7)(C), hereby declare as follows:

I understand that this Declaration will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce this Declaration in connection with a formal proceeding.

1. I am employed as a Registered Nurse ("RN") at Sutter Medical Center, Sacramento ("Sutter" or "Hospital"). I presently work the (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C)") at Sutter as a break relief RN. I have worked as a (b) (6), (b) (7)(C) RN at Sutter for about (b) (6), (b) (7)(C)

2. I heard through coworkers about the alleged incident on (b) (6), (b) (7)(C), 2017 with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) that led to (b) (6), (b) (7) being terminated. I was working that day and did not witness this exchange.

3. As (b) (6), (b) (7)(C) (b) (6), (b) (7) and (b) (6), (b) (7)(C) were being investigated, I heard that RN (b) (6), (b) (7)(C) was a witness of the exchange and that (b) (6), (b) was being asked to share what (b) (6), (b) had witnessed. I had worked alongside (b) (6), (b) (7)(C) for about (b) (6), (b) (7)(C), since when (b) (6), (b) first started at Sutter. At one point, we worked in the same room in the (b) (6), (b) (7)(C) so I got to know (b) (6), (b) well and we have had a collegial friendship.

4. On or around December 3, 2017, I was working my normal day shift as a break relief RN. During my shift, a nurse I was relieving happened to be working in the same room as (b) (6), (b) (7)(C) After I relieved the nurse, it was just me and (b) (6), (b) (7)(C) in the room. I had not seen (b) (6), (b) (7)(C) in a while so I asked (b) (6), (b) how (b) (6), (b) was doing. (b) (6), (b) (7)(C) immediately responded that (b) (6), (b) felt so bad about

how [redacted] was treated and said that [redacted] never thought it would get this far. [redacted] then proceeded to vent to me for quite a while about everything that happened with Sutter and the investigation that led to [redacted] termination. During this conversation I didn't ask many questions—[redacted] just kept talking. It was clear that [redacted] needed to vent. [redacted] went on to say [redacted] could not stand it at Sutter and that's why [redacted] was leaving and moving to [redacted] to be with family. Referring to the investigation that led to [redacted] termination, [redacted] said that [redacted] told them (Sutter) what [redacted] saw but they twisted it around. [redacted] said [redacted] even tried to speak to Sutter again after [redacted] heard what they did to [redacted] but that they wouldn't listen. [redacted] said that (b) (6), (b) (7)(C) who is the (b) (6), (b) (7)(C) , initially asked [redacted] what [redacted] thought should happen to those nurses involved in the [redacted] incident, to which [redacted] suggested that maybe they could all take communication classes. [redacted] expressed how inappropriate [redacted] thought it was for management to be asking [redacted] questions like this. [redacted] reiterated that [redacted] felt really bad about what happened to [redacted] said that [redacted] had heard that [redacted] was taking [redacted] case to DC and [redacted] said that if that's the case, [redacted] be right there with [redacted] I told [redacted] that I knew [redacted] didn't harbor any ill-will toward [redacted] seemed surprised and relieved by this statement. I asked if [redacted] wanted me to relate any message [redacted] had for [redacted] to which [redacted] responded, "just tell [redacted] I'm sorry." [redacted] said that [redacted] told them (Sutter) that [redacted] had always fought for patient safety and that the behavior [redacted] was being accused of was not the [redacted] that [redacted] knew and worked with for [redacted] then compared this to [redacted] experience with [redacted] stating that [redacted] knew of at least two other occasions where [redacted] was spoken to about [redacted] communication skills, or lack thereof. [redacted] expressed that the whole situation was incredibly stressful, so much so that [redacted] even wound up having to go out on workers comp leave. [redacted] said that when [redacted] tried to talk to Sutter about this, they told [redacted] that if

[redacted] couldn't cut it then maybe [redacted] should just leave. [redacted] expressed how disappointed [redacted] was that this is how [redacted] was being treated after [redacted] of service. [redacted] said [redacted] wanted to write a letter to [redacted], Sutter's [redacted], about all this and asked if I would read it. I said I would. [redacted] said that when [redacted] handed over [redacted] resignation to [redacted] ([redacted]). [redacted] asked if [redacted] was leaving because of this whole situation and [redacted] told [redacted] yes, that is why [redacted] was leaving. [redacted] told me that [redacted] was raised to tell the truth and that [redacted] told the truth here, but this (referring I believe to [redacted] termination) is what happened. I asked [redacted] at that point if [redacted] was telling [redacted] truth or Sutter's truth and [redacted] responded that [redacted] didn't know anymore. I mentioned to [redacted] how devastated [redacted] was by all of this, because having this incident on [redacted] record might impact [redacted] ability to [redacted]. [redacted] stared back at me in surprise and I could tell by [redacted] expression that [redacted] had no idea that [redacted] had also been disciplined. [redacted] then said that when [redacted] took a step back and looked at it, [redacted] realized that [redacted] was being used as a pawn for Sutter. I agreed with [redacted]. About this point in the conversation I could tell that [redacted] was getting upset, so I changed the subject and asker [redacted] more about [redacted] move to [redacted].

Later in the afternoon, [redacted] and I returned to discussing the topic of [redacted] termination. [redacted] said that when this was all over, [redacted] wanted to talk with [redacted]. I again reassured [redacted] that [redacted] did not hold any ill-will toward [redacted] [redacted] said again that [redacted] wanted to write a letter to [redacted] because [redacted] knew that [redacted] would never get an exit interview because Sutter knew [redacted] would have nothing nice to say. [redacted] expressed some doubts about the letter, however, saying [redacted] wasn't sure if at that point it would even be worth it. I told [redacted] that for what it was worth, I thought [redacted] should do it since [redacted] was already quitting and had another job lined up.

After our shift ended, I texted [redacted] to wish [redacted] well again on [redacted] move. I asked [redacted] again if there was anything [redacted] wanted me to convey to [redacted] and [redacted] responded, "just that I miss working with [redacted] and I'm sorry." This was the last communication I had with [redacted] regarding this subject.

I have read this Confidential Witness Declaration, consisting of 4 pages, including this page. I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct. Execute on December 14, 2017 in Sacramento, California.

[redacted]

[redacted]

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

February 7, 2018

MARIE K. WALCEK, ESQ.
LEGAL COUNSEL
CALIFORNIA NURSES
ASSOCIATION (CNA)
155 GRAND AVE
OAKLAND, CA 94612

Re: Sutter Medical Center, Sacramento
Case 20-CA-197833

Dear Ms. Walcek:

Your appeal from the Acting Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied.

The Regional Office investigation disclosed insufficient evidence to establish that the Employer violated the National Labor Relations Act by taking adverse employment action against the alleged discriminatees because they engaged in protected concerted activity and/or union activity. The investigation established that on (b) (6), (b) (7)(C), 2017 the alleged discriminatees engaged in protected concerted activity when they discussed employee issues with an (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The evidence indicated that the Employer investigated the incident and determined that the alleged discriminatees engaged in misconduct. The Employer subsequently disciplined two employees and discharged a third employee. The Employer reasonably based its determination on a good faith evaluation of the incident after it interviewed all witnesses.

We conclude that under *Atlantic Steel*, 245 NLRB 814 (1979) the alleged discriminatees' conduct on (b) (6), (b) (7)(C) lost the protection of the Act. Their conversation with the (b) (6), (b) (7)(C) about employee working conditions favors protection of the Act. However, the other three factors do not favor protection of the Act. Regarding the nature of the incident, the Employer investigated the incident and reasonably determined that the alleged discriminatees engaged in misconduct. Incidents occurring in a public place and viewed by other employees do not retain the protection of the Act. Also, the investigation disclosed no evidence that the incident was provoked by any Employer unfair labor practices. Thus, we conclude that the alleged discriminatees lost the protection of the Act for their conduct on (b) (6), (b) (7)(C); and the Employer did not violate the Act, as alleged.

Accordingly, further proceedings on this portion of the charge are unwarranted. The remaining allegations remain subject to further processing.

Sincerely,

Peter Barr Robb
General Counsel

By: _____
Mark E. Arbesfeld, Director
Office of Appeals

cc: JILL H. COFFMAN
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CALIFORNIA NURSES ASSOCIATION (CNA)
155 GRAND AVE
OAKLAND, CA 94612

kh

From: [redacted]
To: Parnell, Janay
Subject: Re: Sutter Medical Center, Sacramento, Case 20-CA-196918
Date: Tuesday, May 2, 2017 11:29:00 PM

Thank you very much!
[redacted]

On May 2, 2017, at 6:12 PM, Parnell, Janay <Janay.Parnell@nlrb.gov> wrote:

> [redacted]
>
> I received your voicemail. Attached is a copy of your affidavit. You can forward it to the Union's Attorney if you wish to do so. (Unfortunately, I cannot send it directly to the Union's Attorney myself.)
>
> Sincerely,
> Janay
>
> Janay Parnell
> Field Examiner - Sacramento Resident Agent
> National Labor Relations Board
> 901 Market Street, Suite 400
> San Francisco, CA 94103
>
> Phone: (202) 406-0912
> Fax: (415) 356-5156
>
>
>
> <AFF.20-CA-196911.[redacted]pdf>

From:	David Willhoite
To:	Parnell, Janay
Cc:	Marie Walcek; Micah Berul; Roy Hong; Sara Castle; Vargas, Olivia
Subject:	CNA IBSA Objections
Date:	Monday, July 24, 2017 2:10:41 PM
Attachments:	image001.png Settlement Response LTR.pdf

Hi Janay,

Please find attached CNA's objections to the Region's proposed IBSA for portions of the charges to which the Region found merit. Thank you for your attention to this matter.

Regards,

David

David Willhoite
Legal Counsel
CNA/NNOC/NNU
tel: 510-273-2275
cell: 510-424-1428
fax: 510-663-4822
www.calnurses.org

Support Single-Payer *Universal Healthcare*
http://www.SinglePayer.com

CALIFORNIA NURSES ASSOCIATION
National Nurses United
A Voice for Nurses. A Vision for Healthcare.

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone: 510-273-2200
fax: 510-663-1625

Via Electronic Mail

July 21, 2017

Janay Parnell, Field Examiner
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

RE: *Sutter Medical Center, Sacramento*
Cases 20-CA-196911, 20-CA-196913,
20-CA-196918, 20-CA-197780, 20-CA-197833

Dear Ms. Parnell,

The California Nurses Association ("CNA") submits this letter regarding the proposed Settlement Agreement ("Settlement") for the above-referenced cases against Sutter Medical Center, Sacramento ("Sutter" or "Employer"). CNA wishes to inform you that we will not be signing onto the proposed Settlement as written, nor will we be signing onto any Settlement until the resolution of our pending appeal of the Regional Director's decision to partially dismiss the above-mentioned cases. First, CNA does not believe, in light of the seriousness of the allegations in this matter, that the Employer is entitled to a Non-Admissions clause. Second, and more importantly, now that the Regional Director has agreed to reconsider her decision in light of CNA's and the individual nurses' appeals, the Region should not be approving any Settlement Agreements during the period of the appeal. As stated in the Casehandling Manual Section 10146.6 (b):

> Partial Settlement and Dismissal of Other Allegations: If the charged party agrees to settle all allegations of a single charge deemed meritorious and other allegations of the same charge are dismissed, the settlement should not normally be approved prior to the expiration of the appeal period for the dismissed allegations, if no appeal is filed, or the denial of the appeal on the dismissed allegations. If the appeal is sustained, the Regional Office should attempt to include in the settlement the allegations found meritorious on appeal. If such efforts fail, the charged party is still willing to be a party to the partial settlement, and the Regional Director concludes that under all the circumstances it would be appropriate to approve the partial settlement, refer to procedures set forth in paragraph (a) above. Otherwise, all meritorious allegations should be handled together.

Therefore, regardless of the 7-day letter, CNA will not be contemplating the execution of any Settlements, with or without a Non-Admissions clause until the Region and/or the Office of Appeals has reached a decision on the merits of CNA's and the individual nurses' appeals.

Sincerely,

CALIFORNIA NURSES ASSOCIATION (CNA)
LEGAL DEPARTMENT

David Willhoite
Marie Walcek
Legal Counsel

cc: Olivia Vargas, NLRB Region 20 Supervisory Field Examiner
Roy Hong, CNA
Sara Castle, CNA

From:	Marie Walcek
To:	Parnell, Janay
Cc:	Vargas, Olivia
Subject:	RE: Sutter Medical Center, Sacramento, Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833
Date:	Tuesday, February 20, 2018 2:45:26 PM
Attachments:	Settlement Agmt_CNA executed 2-20-18.pdf

Janay and Olivia,

Please find attached the re-signed settlement agreement with each page initialed for the Union. The Union will also do its best to assist RNs in re-submitting their signed agreements by noon tomorrow, but hope that the Region will allow some leeway in return time here-- as I'm sure you can understand a single-day turnaround can be difficult for working RNs with limited access to print, scan, upload, and email on breaks and between shifts, though again the Union will certainly do its best to assist in meeting the timeline.

Thank you,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Parnell, Janay [mailto:Janay.Parnell@nlrb.gov]
Sent: Tuesday, February 20, 2018 9:07 AM
To: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C); (b) (6), (b) (7)(C) (b) (6), (b) (7)(C); Marie Walcek
Cc: Vargas, Olivia
Subject: Sutter Medical Center, Sacramento, Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

Good Morning,

Thank you all for sending me the Settlement Agreement with your signatures on it. It turns out that the Agency has a new policy that every page of the Settlement Agreement must be initialed. Therefore, please re-send me your signed versions of the Settlement Agreement with your initials on the bottom right-hand corner of every page. Please send your initialed versions to me via e-mail and cc my supervisor Olivia.Vargas@nlrb.gov, because I will be out of the office tomorrow through next Monday, February 26th. Please send us the initialed versions as soon as possible, but no later than noon tomorrow.

Thank you,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Sutter Medical Center, Sacramento

Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Parties **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them at its facilities located at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

INTRANET POSTING - The Charged Party will also post a copy of the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, on its intranet at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will submit a paper copy of the intranet or website posting to the Region's Compliance Officer when it submits the Certification of Posting and provide a password for a password protected intranet site in the event it is necessary to check the electronic posting.

E-MAILING NOTICE - The Charged Party will email a copy of the signed Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, to all employees who work at the facilities located at 2825 Capitol Avenue, 2800 L Street, and 2801 L Street in Sacramento, California. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Case(s) 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, and 20-CA-197833." The Charged Party will forward a copy of that e-mail, with all of the recipients' e-mail addresses, to the Region's Compliance Officer at karen.thompson@nlrb.gov.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If a Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party, the undersigned Charging Parties, and the undersigned Regional Director. In that case, a Charging Party that fails or refuses to become a party to this Agreement may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes [redacted] No _____
Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if a Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by that Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If a Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party SUTTER MEDICAL CENTER, SACRAMENTO	Charging Party, Case 20-CA-196911 (b) (6), (b) (7)(C)
By: (b) (6), (b) (7)(C) Date July 21, 17 (b) (6), (b) (7)(C) Print Name and Title below (b) (6), (b) (7)(C)	By: Sign below Date Print Name and Title below
Charging Party, Case 20-CA-196913 (b) (6), (b) (7)(C)	**Charging Party, Case 20-CA-196918** (b) (6), (b) (7)(C)
By: Sign below Date Print Name and Title below	By: Sign below Date Print Name and Title below
Charging Party, Case 20-CA-197780 (b) (6), (b) (7)(C)	**Charging Party, Case 20-CA-197833** **CALIFORNIA NURSES ASSOCIATION**
By: Sign Below Date Print Name and Title below	By: Sign Below Date 2/20/18 Print Name and Title below Marie Walcek Counsel for California Nurses Assoc.

Recommended By: Date	Approved By: Date
JANAY M. PARNELL Field Examiner	JILL H. COFFMAN Regional Director, Region 20

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain or enforce the overly broad policy in the administrative leave of absence form requesting employees not to discuss ongoing investigations of employee misconduct and **WE WILL** rescind the rule in the administrative leave notice form on that subject.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions, including workplace investigations, with your coworkers and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT ask you about other employees discussing their workplace investigations.

WE WILL NOT threaten you with corrective action because you exercise your right to discuss workplace investigations with your coworkers.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the portions of all administrative leave notices that were issued to employees since October 14, 2016 that prohibit them from discussing workplace investigations with coworkers and **WE WILL** notify them in writing that this has been done.

Sutter Medical Center, Sacramento
(Employer)

Dated: July 21, 17 **By:** (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine

whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

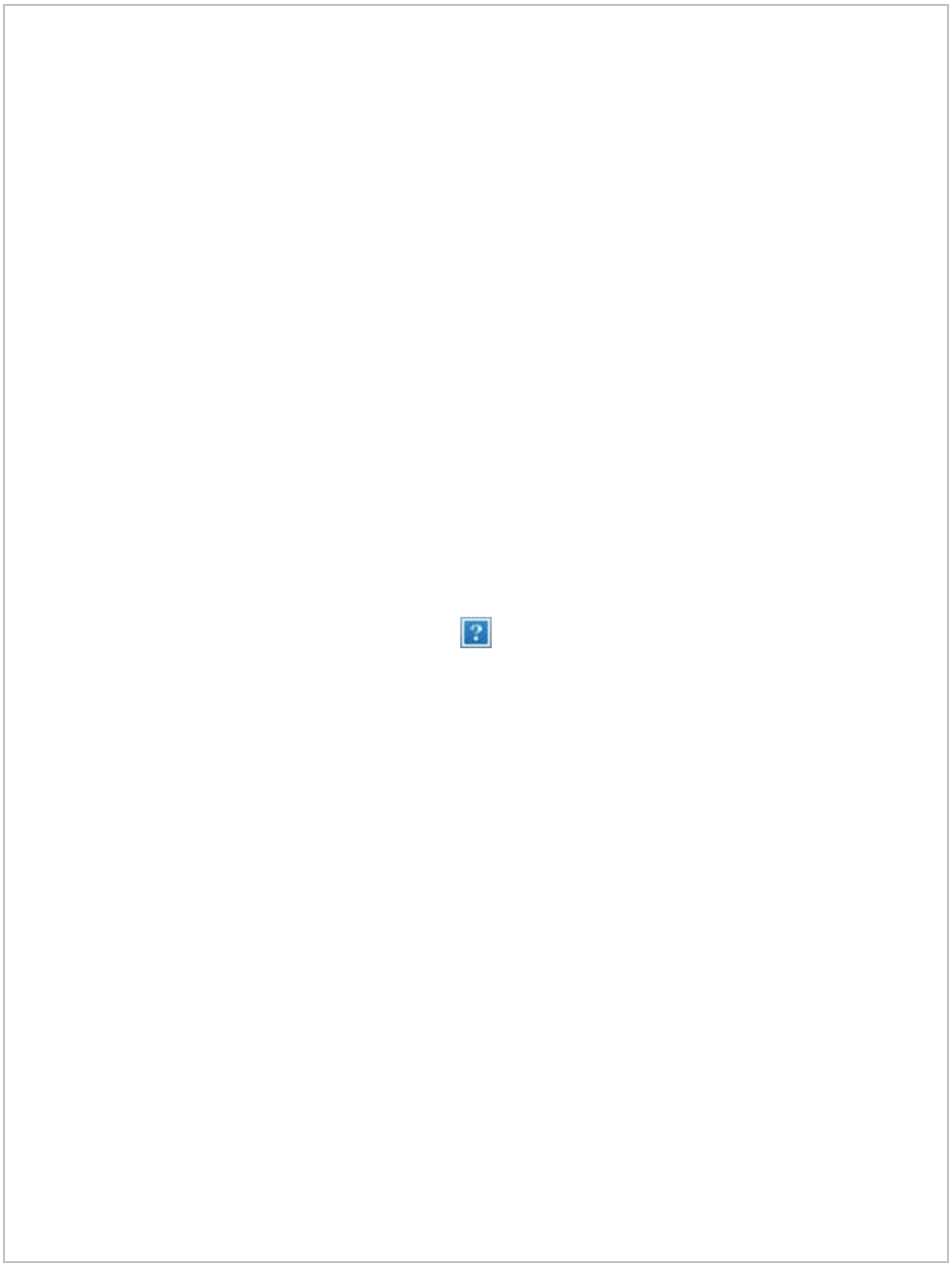
901 Market Street, Suite 400
San Francisco, CA 94103-1738

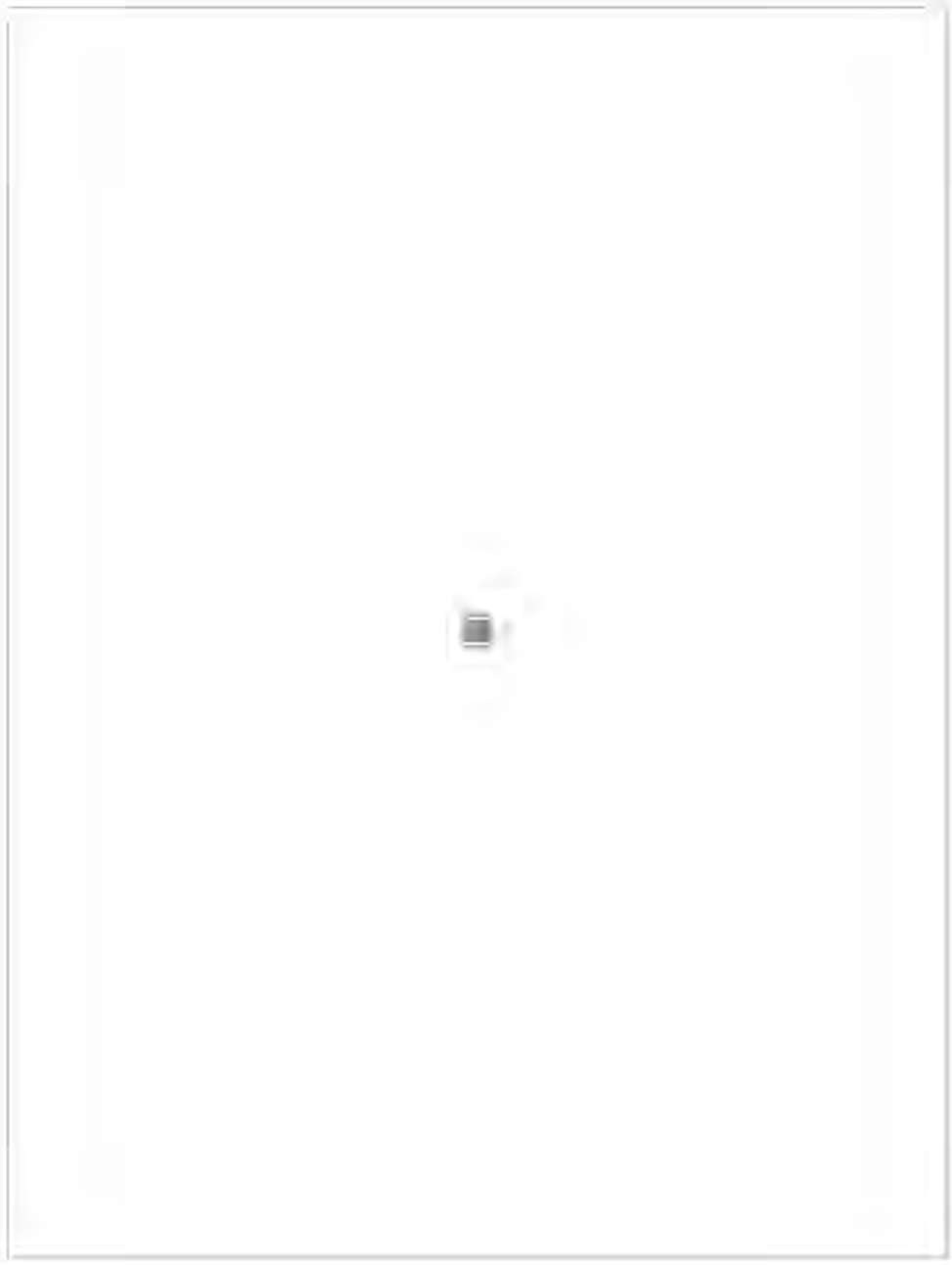
Telephone: (415)356-5130
Hours of Operation: 8:30 a.m. to 5 p.m.

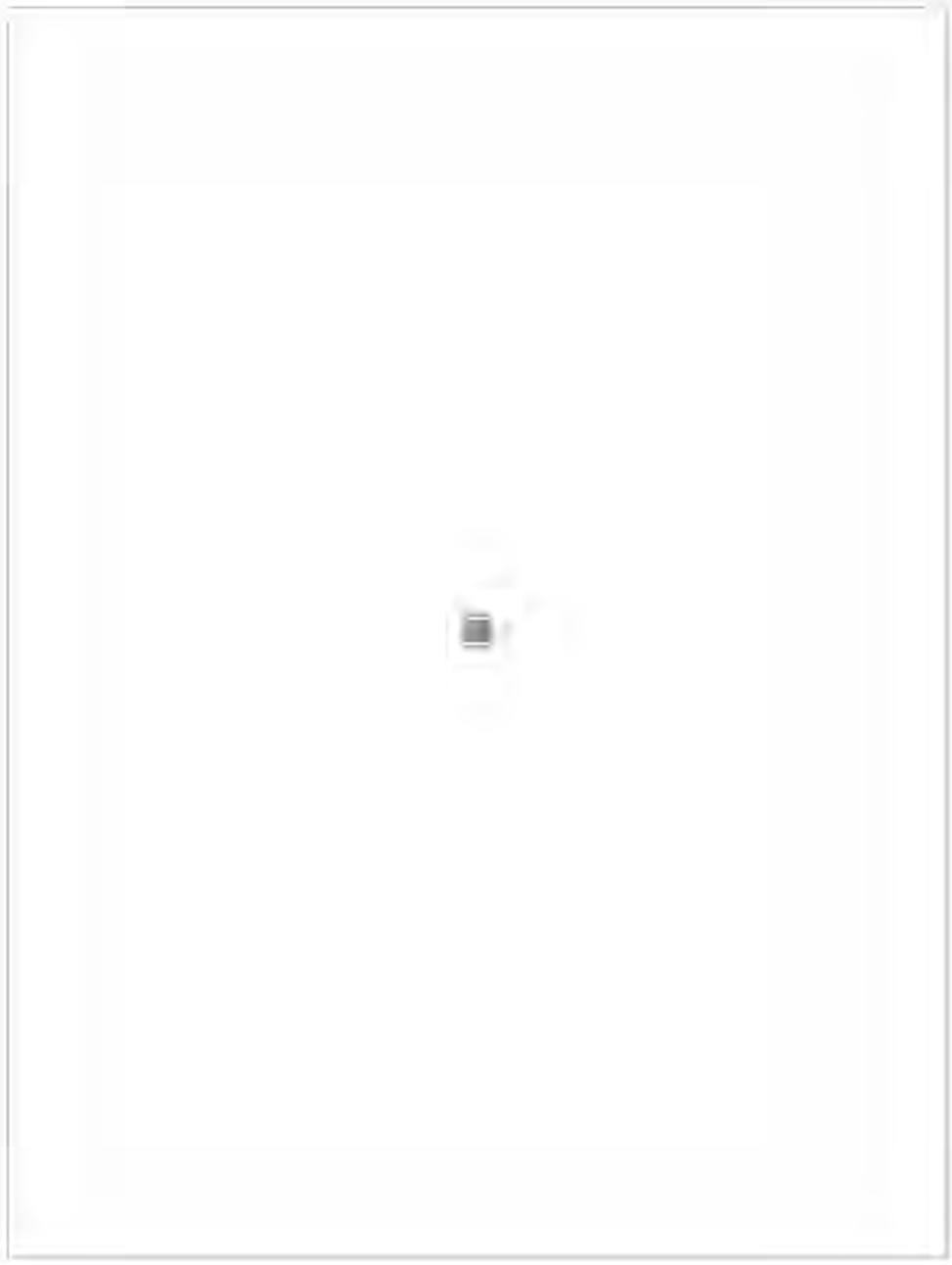
THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

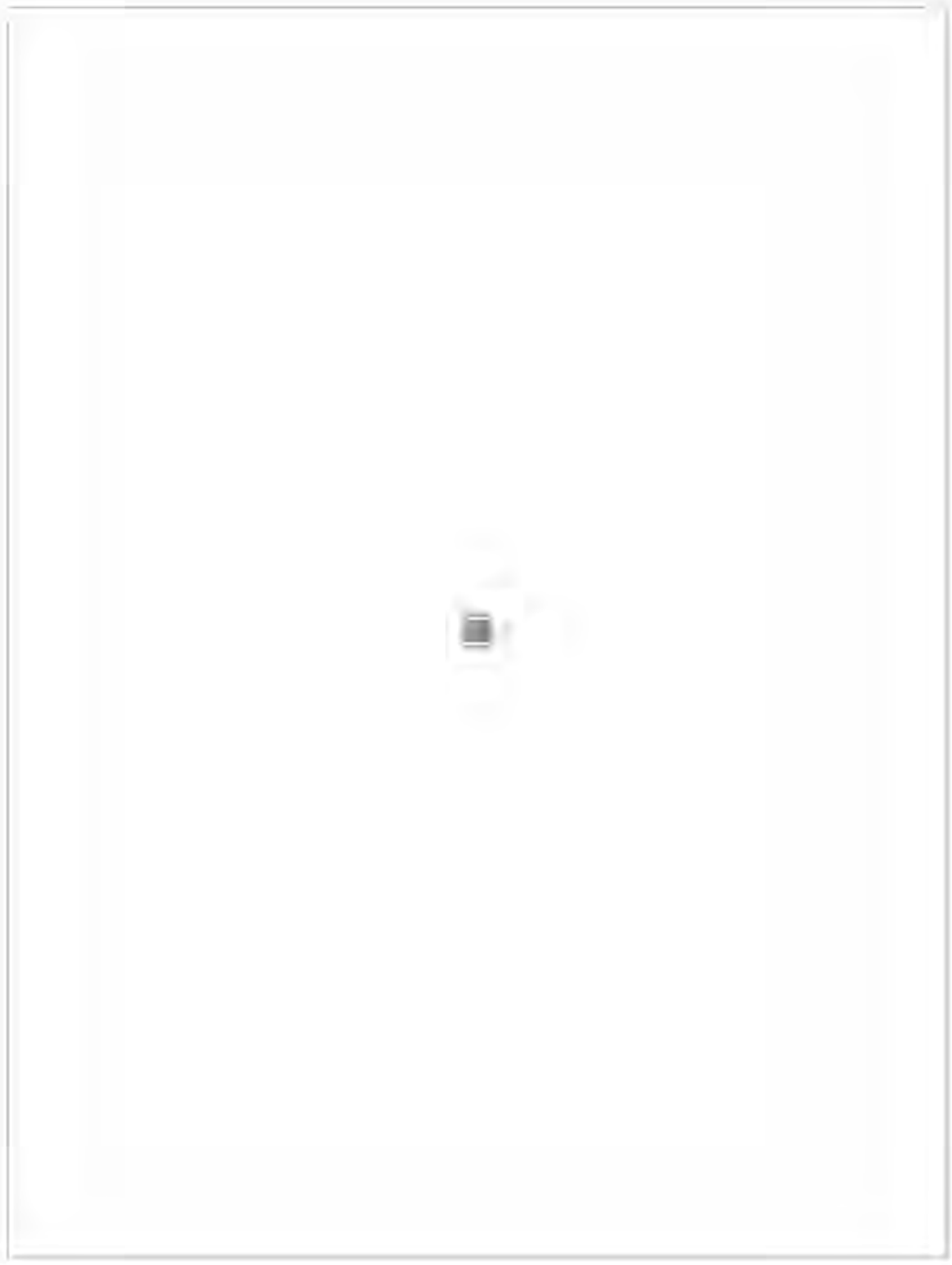
This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

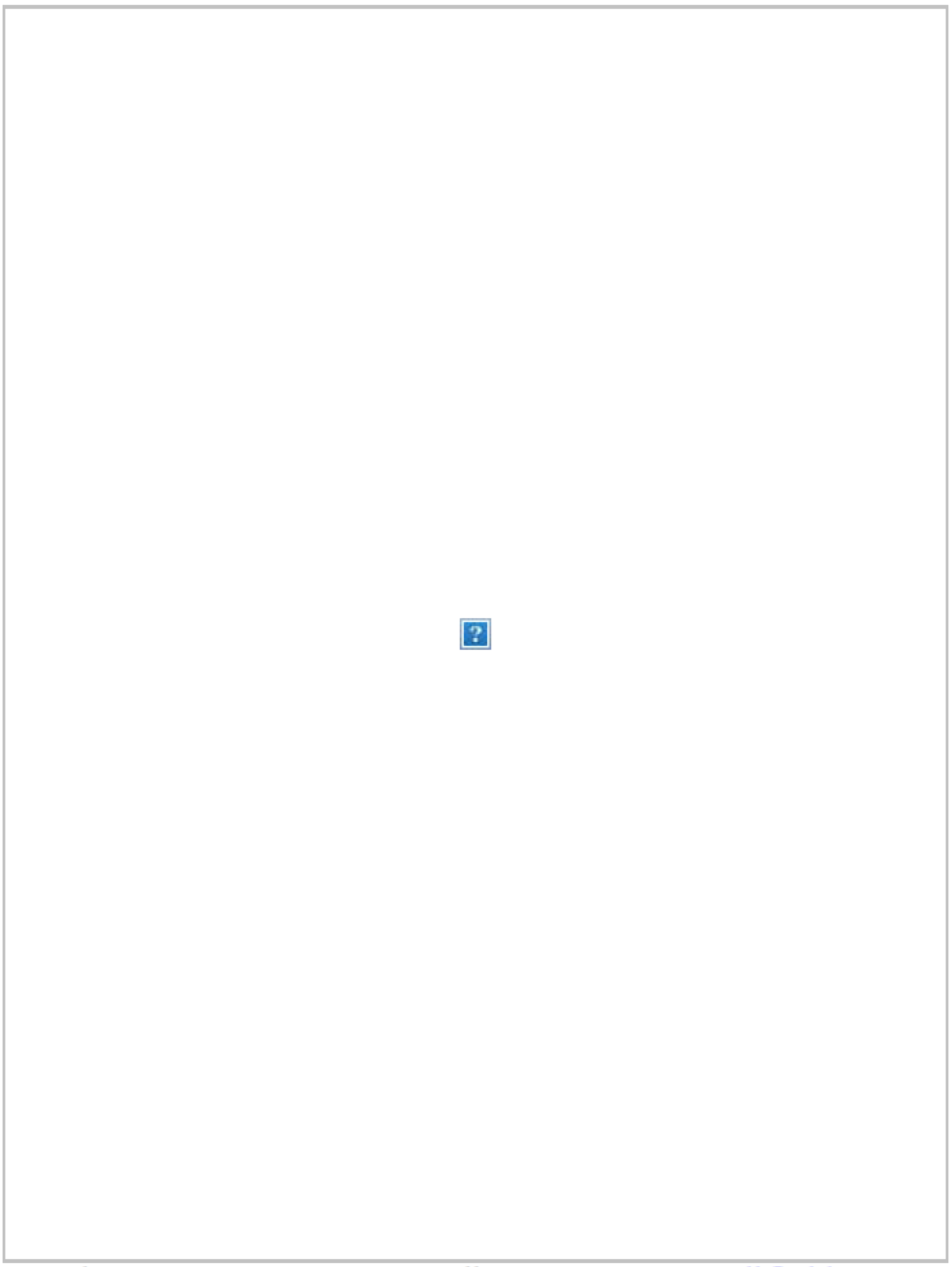
From: (b) (6), (b) (7)(C)
To: Parnell, Janay
Cc: Vargas, Olivia
Subject: Re: Sutter Medical Center, Sacramento, Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833
Date: Tuesday, February 20, 2018 4:06:44 PM
Attachments: Scan 16.jpeg
Scan 14.jpeg
Scan 12.jpeg
Scan 11.jpeg
Scan 3.jpeg











On Feb 20, 2018, at 9:06 AM, Parnell, Janay <Janay.Parnell@nlrb.gov> wrote:

Good Morning,

Thank you all for sending me the Settlement Agreement with your signatures on it. It turns out that the Agency has a new policy that every page of the Settlement Agreement must be initialed. Therefore, please re-send me your signed versions of the Settlement Agreement with your initials on the bottom right-hand corner of every page. Please send your initialed versions to me via e-mail and cc my supervisor Olivia.Vargas@nlrb.gov, because I will be out of the office tomorrow through next Monday, February 26th. Please send us the initialed versions as soon as possible, but no later than noon tomorrow.

Thank you,
Janay

Janay Parnell
Field Examiner - Sacramento Resident Agent
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103

Phone: (202) 406-0912
Fax: (415) 356-5156

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Sutter Medical Center, Sacramento

Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Parties **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

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COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

(b) (6), (b) (7

PARTIES TO THE AGREEMENT — If a Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party, the undersigned Charging Parties, and the undersigned Regional Director. In that case, a Charging Party that fails or refuses to become a party to this Agreement may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes [redacted] (b) (6), (b) (7)(C) No _____
Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if a Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by that Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If a Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

[redacted] (b) (6), (b) (7

Charged Party SUTTER MEDICAL CENTER, SACRAMENTO (b) (6), (b) (7)(C) Date July 21, 17 (b) (6), (b) (7)(C) Print Name and Title below (b) (6), (b) (7)(C)	Charging Party, Case 20-CA-196911 (b) (6), (b) (7)(C) By: Sign below Date Print Name and Title below
Charging Party, Case 20-CA-196913 (b) (6), (b) (7)(C) By: Sign below Date Print Name and Title below	Charging Party, Case 20-CA-196918 (b) (6), (b) (7)(C) Date (b) (6), (b) (7)(C) Print Name and Title below (b) (6), (b) (7)(C)
Charging Party, Case 20-CA-197780 (b) (6), (b) (7)(C) By: Sign Below Date Print Name and Title below	Charging Party, Case 20-CA-197833 CALIFORNIA NURSES ASSOCIATION By: Sign Below Date Print Name and Title below
Recommended By: Date JANAY M. PARNELL Field Examiner	Approved By: Date JILL H. COFFMAN Regional Director, Region 20

(b) (6), (b) (7)

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain or enforce the overly broad policy in the administrative leave of absence form requesting employees not to discuss ongoing investigations of employee misconduct and **WE WILL** rescind the rule in the administrative leave notice form on that subject.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions, including workplace investigations, with your coworkers and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT ask you about other employees discussing their workplace investigations.

WE WILL NOT threaten you with corrective action because you exercise your right to discuss workplace investigations with your coworkers.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the portions of all administrative leave notices that were issued to employees since October 14, 2016 that prohibit them from discussing workplace investigations with coworkers and **WE WILL** notify them in writing that this has been done.

Sutter Medical Center, Sacramento
(Employer)

Dated: July 21, 17 By: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine

(b) (6), (b) (

whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400
San Francisco, CA 94103-1738

Telephone: (415)356-5130
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

(b) (6), (b) (7)

CERTIFICATION OF COMPLIANCE
(PART ONE)

RE: Sutter Medical Center, Sacramento
Cases 20-CA-196911, et al.

(If additional space is needed to provide a full response, attach a sheet(s) with the necessary information.)

Physical Posting

The signed and dated Notice to Employees in the above matter was posted on (date) March 23, 2018 at the following locations: (List specific places of posting) NURSING, BREAKROOMS IN 2825 CAPITOL AVE, 2800 L STREET AND 2801 L STREET.

Intranet Posting

The signed and dated Notice to Employees in the above matter was posted on the Employer's Intranet/Website on (date) March 23, 2018. A copy of the intranet/website posting is attached.

Electronic Distribution

The signed and dated Notice to Employees in the above captioned matter was distributed electronically on (date) March 28, 2018 by the following means. (State means of distribution **and attach proof.**)

I have completed this Certification of Compliance and state under penalty of perjury that it is true and correct.

By: CH (b) (6), (b) (7)(C)

Title: (b) (6), (b) (7)(C)

Date: March 28, 2018

This form should be returned to the Compliance Officer, together with **ONE** original Notice, dated and signed in the same manner as those posted. If the Certification of Compliance Part One and signed Notice is returned via e-file or e-mail, no hard copies of the Certification of Compliance Part One or Notice are required.

CERTIFICATION OF COMPLIANCE
(PART TWO)

RE: Sutter Medical Center, Sacramento
Cases 20-CA-196911, et al.

Rules rescission/revision

On (date) May 31, 2017, the Employer (rescinded)(revised) the rule in administrative leave notice forms requesting employees not discuss ongoing investigations of employee misconduct that are the subject of the Settlement Agreement and referenced in the Notice to Employees.

On (date) March 26, 2018, the Employer (rescinded)(revised) the portions of all administrative leave notices that were issued to employees since October 14, 2016 that are the subject of the Settlement Agreement and referenced in the Notice to Employees.

On (date) March 26, 2018 the Employer notified employees that the rules that are the subject of the Settlement Agreement and referenced in the Notice to Employees have been (rescinded)(revised).

I have completed this Certification of Compliance and state under penalty of perjury that it is true and correct.

CHARGED PARTY/RESPONDENT

By: (b) (6), (b) (7)(C)

Title: (b) (6), (b) (7)(C)

Date: March 28, 2017

This form should be returned to the Compliance Officer. If the Certification of Compliance Part Two and signed Notice is returned via e-file or e-mail, no hard copy of the Certification of Compliance Part Two is required.

FORM NLRB-4722
(6-09)

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

Cases: 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain or enforce the overly broad policy in the administrative leave of absence form requesting employees not to discuss ongoing investigations of employee misconduct and **WE WILL** rescind the rule in the administrative leave notice form on that subject.

YOU HAVE THE RIGHT to discuss wages, hours, and working conditions, including workplace investigations, with your coworkers and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT ask you about other employees discussing their workplace investigations.

WE WILL NOT threaten you with corrective action because you exercise your right to discuss workplace investigations with your coworkers.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the portions of all administrative leave notices that were issued to employees since October 14, 2016 that prohibit them from discussing workplace investigations with coworkers and **WE WILL** notify them in writing that this has been done.

Sutter Medical Center, Sacramento
(Employer)

Date: March 22, 2018 **By:** (b) (6), (b) (7)(C)

Title: (b) (6), (b) (7)(C)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov and the toll-free number 844-762-6572.

901 Market Street, Suite 400
San Francisco, CA 94103

Telephone: (415) 356-5130
Hours of Operation: 8:30 a.m. to 5:00 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, Telephone Number 628/221-8875.

INTRANET POSTING. COMPLETED ON 3/23/1

mysutter

Valley Human Resources

MySutter Intranet | Valley Area

Valley Area | Clinical | HR | Policies | Resources | About the Valley Area | Sutter Health

MySutter > Valley Area > HR

Valley Human Resources

HR

Go to My Sutter Connection for Human Resources information and More. MySutter Connection is your 24-hour online source for answers to HR and Payroll questions—at home or at work. Learn more about using MySutter Connection.

MySutter Connection Login

Topics include:

- Benefits
  - Discounts, EAP, Medical, Dental, Vision, Retirement, Wellness, etc.
- Payroll
  - Pay Calendar
  - Payroll Forms
  - Verification of Employment
- Performance
  - Employee Performance
  - Experience at Work (EDAW)
- Career
  - Job Search (Find My Job Search and My Job Descriptions)
- HR Forms
- Learning
  - eLearning
  - Self-Development
- Time Off & LOA
  - Bereavement
  - Holidays
  - Jury Duty
  - Leaves of Absence (LOA)
  - Paid Time Off (PTO), Requesting Accommodations
  - Work Related Injury or Illness
- Manager Tools (secured)
  - Hiring, Recruitment, HR Reports, etc.

All employees who have Lawson employee ID numbers can access MySutter Connection, except those at Sutter Medical Groups and Kaiser Permanente.

Related Links

- Confidential Message Line
- Education & Training
- eLearning (HealthStream)
- Employee Assistance Program (EAP)
- Employee Discounts
- Employee Health Services (EHS)
- ePAR
- Job Search (for internal job postings)
- Kronos
- Lawson eSelf Service
- Management Resources - SHCMR (secured)
- Management Resources - SHSSR (Secured)
- My Benefits
- MyHealthOnline (make appts, request prescriptions)
- MyPSCP
- NLRB Notice to Employees
- OAR / UAR
- Safety

Contacts

Need further assistance?
Sutter Health Employee Line
916-297-5300 or 855-298-1631
Monday - Friday, 7 a.m. - 5 p.m.

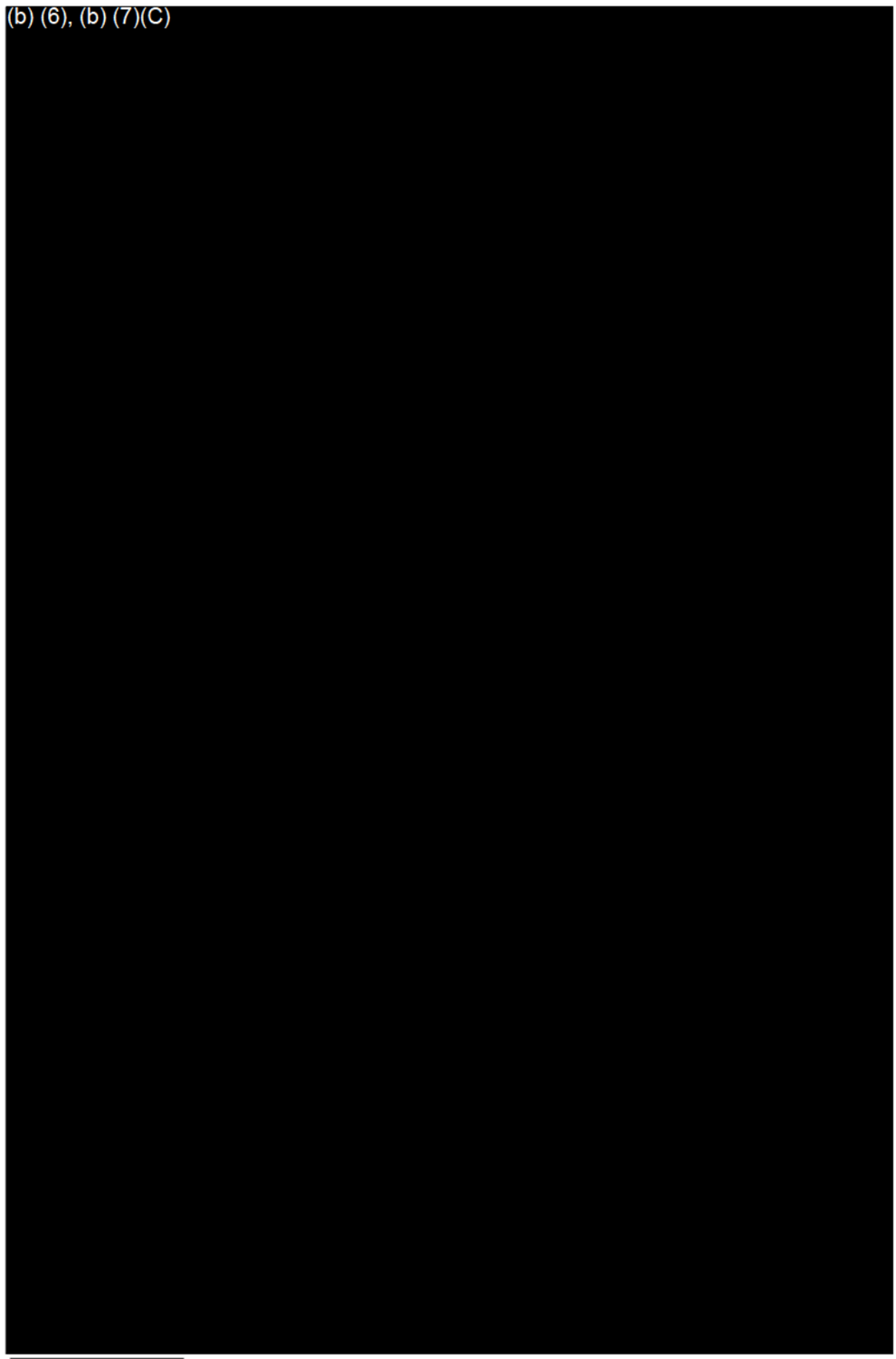
ELECTRONIC EMAILING

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, March 28, 2018 12:52 PM
To: (b) (6), (b) (7)(C)

[redacted]

To: (b) (6), (b) (7)(C)



Cc: (b) (6), (b) (7)(C)
Subject: NLRB Notice to Employees
Attachments: Notice to Employees.pdf

Sending out on behalf of (b) (6), (b) (7)(C), SMCS Administration

We are distributing the attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Cases 20-CA196911, et al.

Please contact your supervisor or HR if you have any questions, thank you.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, March 28, 2018 1:31 PM
To: (b) (6), (b) (7)(C)

[redacted]

Cc: (b) (6), (b) (7)(C)
Subject: NLRB Notice to Employees

Attachments: Notice to Employees.pdf

Sending out on behalf of (b) (6), (b) (7)(C), SMCS Administration

We are distributing the attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Cases 20-CA196911, et al.

Please contact your supervisor or HR if you have any questions, thank you.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

[redacted]

From: [redacted]
Sent: Wednesday, March 28, 2018 1:40 PM
To: [redacted]
Subject: FW: NLRB Notice to Employees
Attachments: Notice to Employees.pdf

Forgot to cc you on this one.

From: [redacted]
Sent: Wednesday, March 28, 2018 1:40 PM
To: [redacted] [redacted]@sutterhealth.org>; [redacted] @sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted] [redacted]@sutterhealth.org>; [redacted]

(b) (6), (b) (7)(C)@sutterhealth.org>(b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) . <(b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; "DL - SMCS - SMH Heart Cath Lab Staff" (b) (6), (b) (7)(C)@sutterhealth.org> <dl-smcs-smhheartcathlabstaffmecathsutterhealthorg@sutterhealth.onmicrosoft.com>; (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)@sutterhealth.org>; (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@sutterhealth.org>
Subject: NLRB Notice to Employees

Sending out on behalf of (b) (6), (b) (7)(C), SMCS Administration

We are distributing the attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Cases 20-CA196911, et al.

Please contact your supervisor or HR if you have any questions, thank you.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Wednesday, March 28, 2018 2:06 PM
To: (b) (6), (b) (7)(C)

Cc: (b) (6), (b) (7)(C)
Subject: NLRB Notice to Employees
Attachments: Notice to Employees.pdf

Sending out on behalf of (b) (6), (b) (7)(C), SMCS Administration

We are distributing the attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 20 of the National Labor Relations Board in Cases 20-CA196911, et al.

Please contact your supervisor or HR if you have any questions, thank you.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Agent's Direct Dial: (628)221-8875

April 3, 2018

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Marie K. Walcek, Legal Counsel
California Nurses Association (CNA)
Legal Department
155 Grand Avenue
Oakland, CA 94612

Re: Sutter Medical Center, Sacramento
Cases 20-CA-196911, 20-CA-196913,
20-CA-196918, 20-CA-197780,
20-CA-197833

Gentlepersons:

We have been advised that on March 23, 2018 the Employer posted the signed and dated Notice to Employees in this matter at the following location(s):

(1) Nursing, Breakrooms in 2825 Capitol Avenue,

(2) 2800 L Street and 2801 L Street

(3) _____

We have also been advised that on March 23, 2018 the Notice to Employees was also posted on the Employer's website/intranet.

We have also been advised that on March 28, 2018 the Notice to Employees was circulated via e-mail to employees.

If you have any information to the contrary, you should inform me promptly. As you know, the Employer is obligated to keep the notices posted continuously for a period of 60 days from the date of posting.

Any complaints regarding posting or any other aspects of compliance in this matter should be promptly directed to this office, in writing, together with any evidence you may have.

Very truly yours,

/s/ Karen Thompson

KAREN K. THOMPSON
Compliance Officer

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Agent's Direct Dial: (628)221-8875

May 10, 2018

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Marie K. Walcek, Legal Counsel
California Nurses Association (CNA)
Legal Department
155 Grand Avenue
Oakland, CA 94612

Re: Sutter Medical Center, Sacramento
Cases 20-CA-196911, 20-CA-196913,
20-CA-196918, 20-CA-197780,
20-CA-197833

Gentlepersons:

Our records show that the Charged Party has complied with the terms of the Settlement Agreement and the cases are now ready to be closed. Unless you advise us and submit evidence by May 17, 2018 that the Settlement Agreement has not been complied with, I will assume that you are satisfied with the compliance by the Charged Party and will recommend the cases be closed.

Very truly yours,

/s/ Karen Thompson

KAREN K. THOMPSON
Compliance Officer

From: (b) (6), (b) (7)(C)
To: Thompson, Karen K.
Subject: SMCS noncompliance with Settlement Agreement
Date: Thursday, May 17, 2018 7:39:25 PM
Attachments: Letter to NLRB regarding posting.doc

May 17, 2018

United States Government
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Ms. Karen Thompson:

Re: Sutter Medical Center, Sacramento
Cases 20-CA-196911, 20-CA-196913, 20-CA-196918, 20-CA-197780, 20-CA-197833

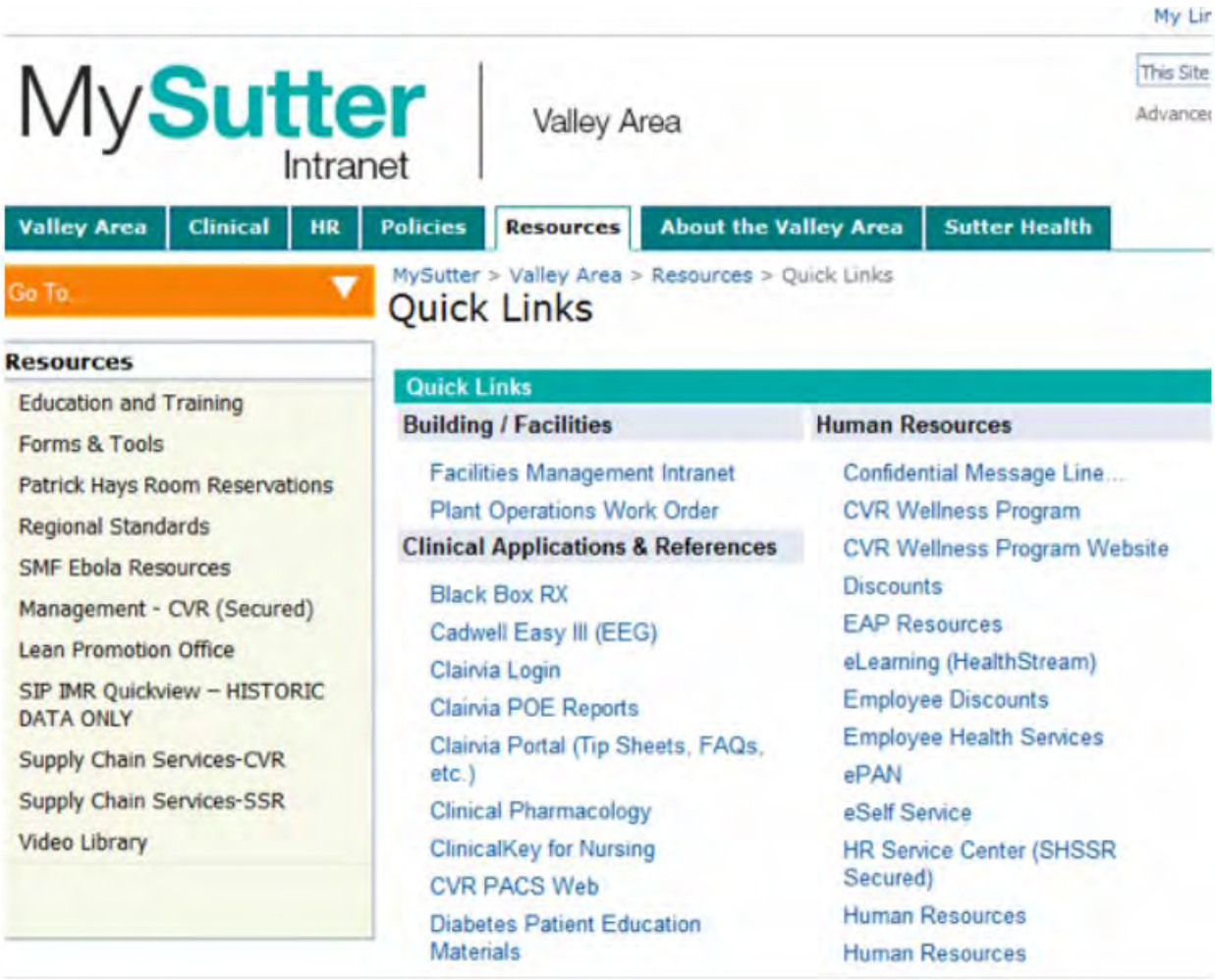
According to the letter that was sent to us on May 10, 2018, Sutter Medical Center, Sacramento was in compliance with the terms of the Settlement Agreement. We disagree. Not once have we seen an NLRB posting on the intranet site. One or another of us has looked at the intranet site everyday (except when the entire system was down) since the posting was to have been placed; yet it was not discovered.

Even if it were technically up, it was impossible for three of us to find, therefore, for all intents and purposes, it was not posted.

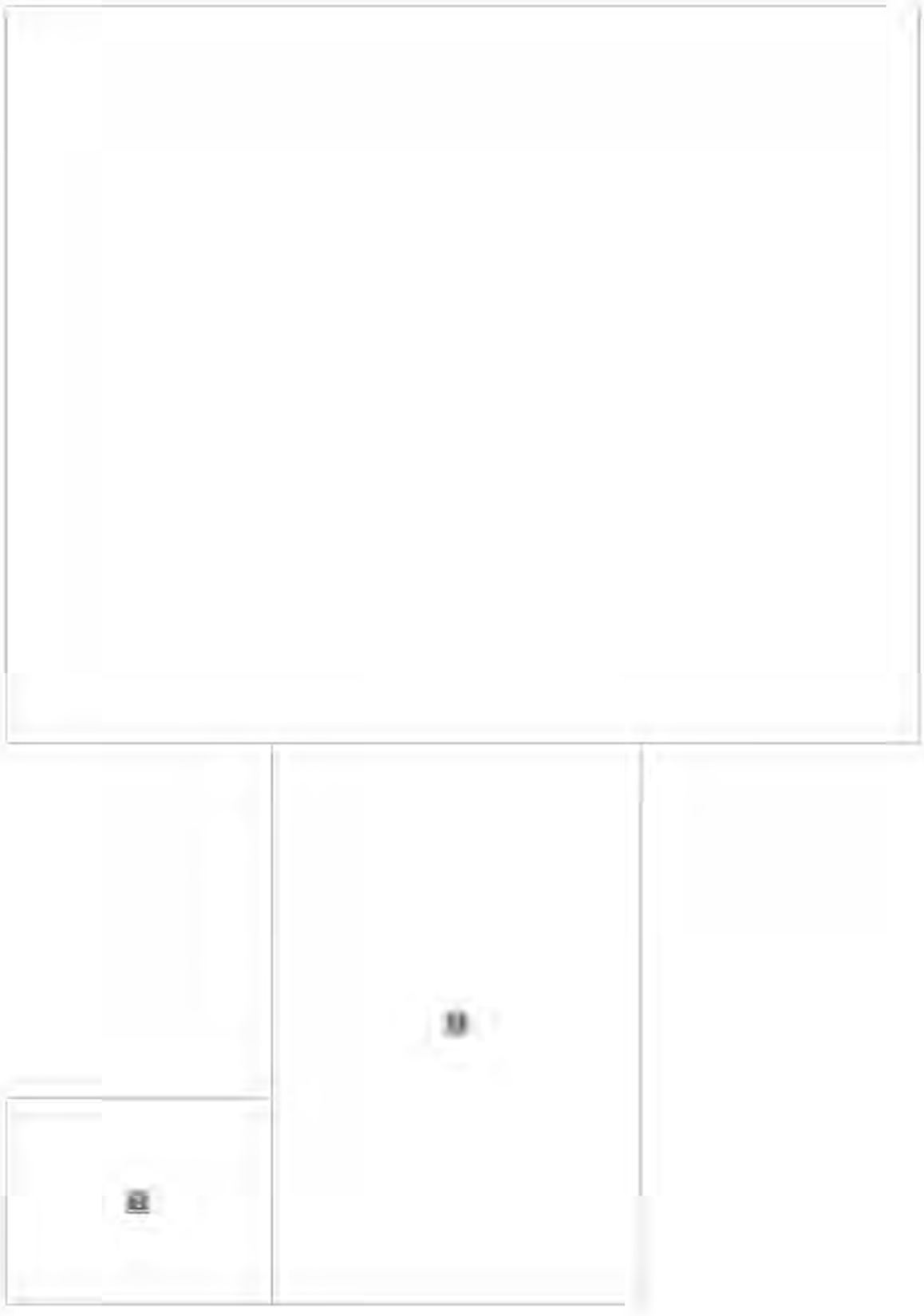
Sincerely,

(b) (6), (b) (7)(C), RN
(b) (6), (b) (7)(C), RN
(b) (6), (b) (7)(C), RN

From: (b) (6), (b) (7)(C)
To: Thompson, Karen K.
Subject: home page
Date: Friday, May 18, 2018 12:07:17 PM
Attachments: Screen Shot 2018-05-18 at 9.06.44 AM.png


My Lir
This Site
Advance
MySutter
Intranet
Valley Area
Valley Area
Clinical
HR
Policies
Resources
About the Valley Area
Sutter Health
Go To
MySutter > Valley Area > Resources > Quick Links
Quick Links
Resources
Education and Training
Forms & Tools
Patrick Hays Room Reservations
Regional Standards
SMF Ebola Resources
Management - CVR (Secured)
Lean Promotion Office
SIP IMR Quickview – HISTORIC DATA ONLY
Supply Chain Services-CVR
Supply Chain Services-SSR
Video Library
Quick Links
Building / Facilities
Facilities Management Intranet
Plant Operations Work Order
Clinical Applications & References
Black Box RX
Cadwell Easy III (EEG)
Clairvia Login
Clairvia POE Reports
Clairvia Portal (Tip Sheets, FAQs, etc.)
Clinical Pharmacology
ClinicalKey for Nursing
CVR PACS Web
Diabetes Patient Education Materials
Human Resources
Confidential Message Line...
CVR Wellness Program
CVR Wellness Program Website
Discounts
EAP Resources
eLearning (HealthStream)
Employee Discounts
Employee Health Services
ePAN
eSelf Service
HR Service Center (SHSSR Secured)
Human Resources
Human Resources

From: [redacted]
To: Thompson, Karen K.
Subject: Valley Pictures
Date: Friday, May 18, 2018 12:01:27 PM
Attachments: Screen Shot 2018-05-18 at 9.00.25 AM.png
Screen Shot 2018-05-18 at 9.00.09 AM.png
Screen Shot 2018-05-18 at 8.59.54 AM.png
Screen Shot 2018-05-18 at 8.57.16 AM.png



Valley Human Resources

Employee Services

Your Pathway to HR and Payroll

Go to MySutter Connection for Human Resources Information and More
MySutter Connection is your 24-hour online source for answers to HR and Payroll questions—at home or at work. Learn more about using MySutter Connection.

MySutter Connection Login
Sutter Employees Only (non-phy.)

Topics Include:

- **Benefits**
  - Discounts, EAP, Medical, Dental, Vision, Retirement, Wellness, etc.
- **Payroll**
  - Pay Calendar
  - Payroll Forms
  - Verification of Employment
- **Performance**
  - Employee Performance
  - Experience of Work (EOW)
- **Career**
  - Job Search *(Find MyJobSearch and MyJob Descriptions)*
- **HR Forms**
- **Learning**
  - eLearning
  - Self-Development
- **Time Off & LOA**
  - Bereavement
  - Holidays
  - Jury Duty
  - Leaves of Absence (LOA)
  - Paid Time Off (PTO), Requesting Accommodations
  - Work Related Injury or Illness
- **Manager Tools (secured)**
  - Hiring, Recruitment, HR

Related Links

- Confidential Message Line
- Education & Training
- eLearning (HealthStream)
- Employee Assistance Program (EAP)
- Employee Discounts
- Employee Health Services (EHS)
- ePAN
- Job Search (for Internal job postings)
- Kronos
- Lawson eSelf Service
- Management Resources - SHCVR (secured)
- Management Resources - SHSSR (Secured)
- MyBenefits
- MyHealthOnline (make appts., request prescriptions)
- MyPSDP
- NLRB Notice to Employees
- OAR / UAR
- Safety


My Links ▾ Pywell, Juli M. ▾ | WebMail | Help
MySutter Intranet
Sutter Medical Center Sacramento
This Site: SMCS Portal
Advanced Search
I Like It
Tags & Notes
SMCS Portal
Clinical
HR
Policies
Resources
About SMCS
Sutter Health
Go To
MySutter > Valley Area > SMCS Portal
Sutter Medical Center, Sacramento
SMCS Forms & Tools
Find Forms & Tools
Hospitals & Medical Groups
Find Affiliate Intranet Sites
Dave's Friday 5
Read this Week's 5 >>
From Our Leaders
Hospitals, Circa 1970...Early Life Memories
Read Blog >>
NewsPlus – SMCS
NewsPlus – Network
Annual Report Celebrates 'Rock Star' Nurses
Just in time for Nurses Week, Sutter Medical Center, Sacramento nurse leaders produced the first-ever Annual Report, subtitled our RNs' three R's: "Resilient, Real and Rock Stars."
Read the Report>>
Other Top Stories
May Religious Observances / May Gift Shop Promotions
Penguins and Alligators at Sutter Children's Center, Sacramento? Yes, Please!
Go to the NewsPlus Blog for More News >>
Frequently Viewed Links
* Top Links
Quick Links (Valley)
Quick Links (SMCS)
Human Resources
MyBenefits
Legal, Risk & Compliance
Stand Up with Pride: Volunteers Needed
Join our 2018 Pride teams in Sacramento, San Francisco and Utah. Register today!
2018 Sutter Intranet Upgrade. Provide feedback on Yammer.
MySutter Connection Login
Sutter Employees Only (non-phy)
Sutter EHR Resources
Select
Highlights

Hospitals, Circa 1970...Early Life Memories

Read Blog >>

Debbie Sandberg
Director, Environmental Services

Team Sutter - Join Now!

Now there's an easy way to see what's happening around the Sutter Health network, and share your own news and photos, too!
Visit Team Sutter.

In the Community

Frequently Viewed Links

*** Top Links**
- Quick Links (Valley)
- Quick Links (SMCS)
- Patient Care Forms & Physician Orders

Accessibility (ADA)
- Disability Accommodation Guide
- Accessibility (ADA)

Benefits & HR
- HR Forms
- Kronos
- MyPSDP

Clinical
- ClinicalKey for Nursing
- Clinical Skills
- Nursing (SMCS)
- Physicians (SMCS)
- Library Resources
- Health Literacy – Stoplight Tools
- Office of Patient Experience

Collaboration Sites
- Sutter Medical Center Sacramento Collaboration

Departments/Directories
- Diversity & Inclusion
- Social Work Services (SMCS)

Human Resources
- MyBenefits

Legal, Risk & Compliance
- Legal, Risk & Compliance
- Standard of Business Conduct
- Confidential Message Line

Philanthropy
- Philanthropy (SMCS)
- Employee Giving
- Funding Initiatives

Policies
- PolicyStat (SMCS)
- Patient Care Standards (SMCS)
- Valley & Affiliate Policies

QAR
- Patient Safety Report (formerly QAR)

Quality
- Critical Care Quality Reporting
- Patient Safety Reporting (MIDAS)
- SHVA Quality Reporting

Recognitions/Awards
- Flagship Award (PDF)
- Flagship Award (Online Form)

Sutter Shared Services (S3)
- Sutter Shared Services

Sutter EHR Resources

Select

Highlights

Find Highlights

SMCS Calendar

Did You Know?

Transforming Care through Research

Our researchers discover new ways to predict, prevent and diagnose health issues—and rapidly translate those findings to improve care. Our teams recently received a grant to evaluate our patients' experiences with a group-based diabetes prevention program that has gained national attention for its success.

Transforming Our Network

Our Multi-Year Strategy

We're moving forward with a bold strategy to change our care model in the best interest of our patients, clinicians, employees and communities. **Learn more.**

Sutter Safe Care

Sutter Employees Get Involved
Visit the AngelPoints website to see all the ways employees can pitch in around the community!
Go to AngelPoints >>

Stay Connected!

Follow Sutter On Social Media

Read NewsPlus

Sutter Social Media Policy

Sutter Health
Sutter Medical Center, Sacramento

Nutrition & Food Services (SMCS)
Pharmacy (SMCS)
Campus Phone Directory (SMCS)
Region & Affiliate Departments

Education & Training

Education
QuickHelp - Microsoft App Tutorials
Leadership Development (LEAD)
eLearning (Healthstream)

Employee Services

Employee Assistance Program (EAP)
Employee Discounts

Forms & Tools

MyEHS
KRONOS

Work Orders

IS Service Desk

Campus Resources

Title

Section : **Food Options** (11)

Section : **SMCS Area Maps** (9)

Introducing the Sutter Safe Care Site
Find resources related to Safe Care training, employee discussions, or watch the latest Safe Care video blog. Our Safe Care site has everything you need to join Sutter's quest to eliminate harm. Visit the Safe Care Site

Safety Starts With Me.
Sutter Safe Care

EAP Resources

eLearning (HealthStream)

Employee Discounts

ePAN

eSelf Service

HR Service Center (SHSSR Secured)

Kronos

Lawson eSelf Service

MyBenefits

MyEHS

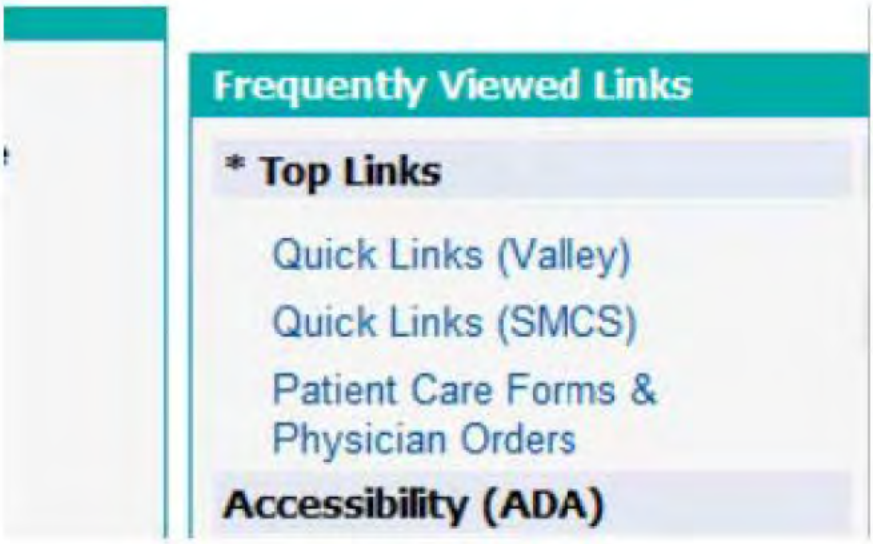
MyJobSearch

MyPSDP

Regional Standards

SMCS Employee Lactation Resource Guide

Infection Control


Frequently Viewed Links
* Top Links
Quick Links (Valley)
Quick Links (SMCS)
Patient Care Forms &
Physician Orders
Accessibility (ADA)

From: Thompson, Karen K.
To: "(b) (6), (b) (7)(C)
Subject: Sutter Medical 20-CA-196911 et al.
Date: Friday, May 18, 2018 11:20:29 AM
Attachments: DEV.20-CA-196911.screen shot of intranet posting.pdf

---

(b) (6), (b) (7)(C)

Please find attached a screen shot of the intranet posting provided to me by Sutter. Will you please try to access the site to locate the Notice to Employees? The arrow drawn on the screen shot directs you to the link. Please let me know if you find the Notice or if you have problems in doing so.

Karen K. Thompson, Compliance Officer
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
(628) 221-8875 phone
(415) 356- 5156 fax

INTRANET POSTING. COMPLETED ON 3/23/1

MySutter Intranet | Valley Area

Valley Area | Clinical | HR | Policies | Resources | About the Valley Area | Sutter Health

MySutter > Valley Area > HR

Valley Human Resources

HR

Go to My Sutter Connection for Human Resources information and more. MySutter Connection is your 24-hour online source for answers to HR and Payroll questions—at home or at work. Learn more about using MySutter Connection.

MySutter Connection Login

Topics Include:

- Benefits
  - Discounts, EAP, Medical, Dental, Vision, Retirement, Wellness, etc.
- Payroll
  - Pay Calendar
  - Payroll Forms
  - Verification of Employment
- Performance
  - Employee Performance
  - Experience at Work (EDelP)
- Career
  - Job Search (Find My Job Search and My Job Descriptions)
- HR Forms
- Learning
  - eLearning
  - Self Development
- Time Off & LOA
  - Bereavement
  - Holidays
  - Jury Duty
  - Leaves of Absence (LOA)
  - Paid Time Off (PTO), Requesting Accommodations
  - Work Related Injury or Illness
- Manager Tools (secured)
  - Hiring, Recruitment, HR Reports, etc.

All employees who have Lawson employee ID numbers can access MySutter Connection, except those at Sutter Medical Groups and Kaiser Permanente.

Related Links

- Confidential Message Line
- Education & Training
- eLearning (HealthStream)
- Employee Assistance Program (EAP)
- Employee Discounts
- Employee Health Services (EHS)
- ePMI
- Job Search (for internal job postings)
- Knowa
- Lawson eSelf Service
- Management Resources - SHCMR (secured)
- Management Resources - SHSSR (Secured)
- MyBenefits
- MyHealthOptions (make open enrollment selections)
- MyFSCP
- NLRB Notice to Employees
- OAR / UAR
- Safety

Contact

Need further assistance?
Sutter Health Employee Line
916.797.8300 or 855.298.1631
Monday - Friday, 7 a.m. - 5 p.m.

From: Marie Walcek
To: Thompson, Karen K.
Subject: RE: Sutter Medical 20-CA-196911 et al.
Date: Friday, May 18, 2018 12:23:59 PM

Thanks, Karen. I was not aware that [redacted] planned to respond (or was still having any issues finding the postings). We will check in with [redacted] as well.

Thanks again,
Marie

Marie Walcek
California Nurses Association
National Nurses United
155 Grand Ave., Oakland, CA 94612
Office: 510-433-2742

From: Thompson, Karen K. [mailto:Karen.Thompson@nlrb.gov]
Sent: Friday, May 18, 2018 8:21 AM
To: Marie Walcek
Subject: FW: Sutter Medical 20-CA-196911 et al.

Marie,
My email to [redacted]
Karen

From: Thompson, Karen K.
Sent: Friday, May 18, 2018 8:20 AM
To: [redacted] <[redacted]
Subject: Sutter Medical 20-CA-196911 et al.

[redacted]
Please find attached a screen shot of the intranet posting provided to me by Sutter. Will you please try to access the site to locate the Notice to Employees? The arrow drawn on the screen shot directs you to the link. Please let me know if you find the Notice or if you have problems in doing so.

Karen K. Thompson, Compliance Officer
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
(628) 221-8875 phone
(415) 356- 5156 fax

From: Ostrem, Eric
To: Thompson, Karen K.; (b) (6), (b) (7)(C)
Subject: RE: [**External**] Emailing: Screen Shot 2018-05-18 at 9.06.44 AM
Date: Friday, May 18, 2018 12:58:17 PM

Karen,

Unfortunately, that is not an accurate characterization of the situation, for several reasons. I would be happy to come to Oakland to your office on Monday to show you.

First, it is true SMCS employees use the MySutter SMCS portal. On that portal, one of the tabs at the top of the page is HR. (You can see it on your screenshot.) If you click on the HR tab, it takes you to the Valley Human Resources page because the SMCS human resources information is integrated with the human resources information from other Sutter Health affiliates in our Valley Area. They are not separate portals. That is the HR page for SMCS employees. Once on that HR page, which is the only HR page for SMCS employees, there is a clearly visible link to "NLRB Notice to Employees." So this notice was posted directly on the HR page for SMCS employees. And frankly, it is posted in a more prominent way than most other notices to employees. It is posted right alongside links to the timekeeping system, employee education, and employees' information about their pay and benefits.

Second, our Certificate of Compliance sent in after the postings when up showed where it was posted. There were no objections at that time. Instead, the union has waited until just a couple days before the end of the 60-day period to object. It is a last-minute attempt to get an extended posting period without any good cause.

Third, the settlement agreement only requires posting on the intranet page. We complied with that requirement. And further, based on the description above, the posting is prominent and readily accessible. Two clicks to view the notice is completely reasonable, and nothing in the settlement agreement requires a maximum number of clicks.

Thanks,
Eric

-----Original Message-----
From: Thompson, Karen K. [mailto:Karen.Thompson@nlrb.gov]
Sent: Friday, May 18, 2018 9:30 AM
To: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) @sutterhealth.org>; Ostrem, Eric <OstremE@sutterhealth.org>
Subject: [**External**] Emailing: Screen Shot 2018-05-18 at 9.06.44 AM

WARNING: This email originated outside of the Sutter Health email system!
DO NOT CLICK links if the sender is unknown and never provide your User ID or Password.

(b) (6), (b) (7)(C) and Eric,
I am told by one of the Charging Parties that they receive information from Sutter via My Sutter SMCS portal (see attached screen shot) and not the Valley Area portal where the Notice was posted. Once they were told where it had been posted, the Charging Parties objected that the posting on the Valley Area site was not readily accessible in that it required at least two clicks to find the Notice. In order to fix the issues, I would like Sutter to post the Notice itself on the home pages of the MySutter/SMCS and My Sutter/Valley Area as an image rather than links to the document. Once this has been done, please send me the screen shots of the two pages and I will direct the Charging Parties to log on and access the postings. A new 60-day posting will start when the Notice goes up on the SMCS portal page.

Please let me know if you have any questions.
Thanks,

Karen K. Thompson, Compliance Officer
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
(628) 221-8875 phone
(415) 356- 5156 fax

Your message is ready to be sent with the following file or link attachments:

Screen Shot 2018-05-18 at 9.06.44 AM

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Thompson, Karen K.
To: "Marie Walcek"; (b) (6), (b) (7)(C)
Subject: RE: Sutter intranet posting
Date: Monday, May 21, 2018 11:04:00 AM

Marie and (b) (6), (b)
I had a chance to discuss the intranet posting issue with the Regional Director on Friday. She will not require Sutter to re-post the intranet posting. She has determined that the steps it took in to post on its intranet are sufficient and that it is in compliance with the terms of the settlement. She noted that the intranet posting was one of three notification methods so between the three ways, employees had ample opportunity to read the Notice to Employees. We will close the cases after the end of the 60-day posting period absent any compelling reason not to.
Thanks,

Karen K. Thompson, Compliance Officer
NLRB, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
(628) 221-8875 phone
(415) 356- 5156 fax

From: Thompson, Karen K.
Sent: Friday, May 18, 2018 10:12 AM
To: Marie Walcek <MWalcek@calnurses.org>; (b) (6), (b) (7)(C)
Subject: Sutter intranet posting

Marie and Julie,
This is Sutter's response to my email to them about posting Notice on SMCS site. I am going to have to get my Regional Director to make the call on this issue so if you have any arguments to make countering Eric Ostrem's below, please pass along by May 23.
Thanks,
Karen

Sutter response to my recent email asking for them to re-post on intranet

Karen,

Unfortunately, that is not an accurate characterization of the situation, for several reasons. I would be happy to come to Oakland to your office on Monday to show you.

First, it is true SMCS employees use the MySutter SMCS portal. On that portal, one of the tabs at the top of the page is HR. (You can see it on your screenshot.) If you click on the HR tab, it takes you to

the Valley Human Resources page because the SMCS human resources information is integrated with the human resources information from other Sutter Health affiliates in our Valley Area. They are not separate portals. That is the HR page for SMCS employees. Once on that HR page, which is the only HR page for SMCS employees, there is a clearly visible link to "NLRB Notice to Employees." So this notice was posted directly on the HR page for SMCS employees. And frankly, it is posted in a more prominent way than most other notices to employees. It is posted right alongside links to the timekeeping system, employee education, and employees' information about their pay and benefits.

Second, our Certificate of Compliance sent in after the postings when up showed where it was posted. There were no objections at that time. Instead, the union has waited until just a couple days before the end of the 60-day period to object. It is a last-minute attempt to get an extended posting period without any good cause.

Third, the settlement agreement only requires posting on the intranet page. We complied with that requirement. And further, based on the description above, the posting is prominent and readily accessible. Two clicks to view the notice is completely reasonable, and nothing in the settlement agreement requires a maximum number of clicks.

Thanks,
Eric

From:	Ostrem, Eric
To:	Thompson, Karen K.
Subject:	RE: [**External**] Confirmation of 60-Day Posting form attached to letter
Date:	Thursday, May 31, 2018 12:28:31 PM
Attachments:	20180531081247736.pdf

Absolutely. I mailed it on Tuesday, so my guess is you will receive it any day now. But in the meantime, here is a scanned copy. Thanks

From: Thompson, Karen K. [mailto:Karen.Thompson@nlrb.gov]
Sent: Thursday, May 31, 2018 9:22 AM
To: Ostrem, Eric <OstremE@sutterhealth.org>
Subject: RE: [**External**] Confirmation of 60-Day Posting form attached to letter

Eric,
I haven't received this in the mail yet. Is it possible to scan and send via email?
Thanks
Karen

From: Ostrem, Eric [mailto:OstremE@sutterhealth.org]
Sent: Thursday, May 24, 2018 4:16 PM
To: Thompson, Karen K. <Karen.Thompson@nlrb.gov>
Subject: RE: [**External**] Confirmation of 60-Day Posting form attached to letter

Hi Karen,

I just signed this. Will send it by mail shortly.

Thanks,
Eric

From: Thompson, Karen K. [mailto:Karen.Thompson@nlrb.gov]
Sent: Thursday, May 24, 2018 11:06 AM
To: Ostrem, Eric <OstremE@sutterhealth.org>
Subject: [**External**] Confirmation of 60-Day Posting form attached to letter

Eric,
This was addressed to Jay but thought I'd send to you too since we were discussing it in our emails about intranet postings. I'll close the cases as soon as I receive the executed Confirmation of 60-Day Posting form.
Thanks,

Karen

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738
Agency Website: www.nlrb.gov
Telephone: (415)356-5130
Fax: (415)356-5156

May 31, 2018

Jatinder K. Sharma, Esq.
Sutter Health - Office of The General Counsel
2200 River Plaza Dr
Sacramento, CA 95833-4134

Re: Sutter Medical Center, Sacramento
Cases 20-CA-196911, 20-CA-196913,
20-CA-196918, 20-CA-197780,
and 20-CA-197833

Dear Mr. Sharma:

The above-captioned cases have been closed on compliance. Please note that the closing is conditioned upon continued observance of the informal Settlement Agreement.

Very truly yours,

/s/

DANIEL OWENS
Acting Regional Director

cc: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Dave Cheney, CEO
Sutter Medical Center, Sacramento
2825 Capitol Avenue
Sacramento, CA 95816-5680

Marie K. Walcek, Legal Counsel
California Nurses Association (CNA)
155 Grand Avenue
Oakland, CA 94612

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)